United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

74-2468

B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

-against-

AARON L. STEWART,

Defendant-Appellant.

APPELLANT'S APPENDIX

DAVID A. PRAVDA
Attorney for Defendant-Appellant
Office & P.O. Address
10 East 40th Street
New York, New York 10016
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UNITED STATES COURT OF APPEALS
FILED
JAN 30 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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INDEX TO APPENDIX

	PAGE
Indictment	2a
District Court Docket Sheets	5a
Discovery Letter Dated May 28, 1974 from U.S. Attorney's Office to David A. Pravda	11a
Letter dated July 1, 1974 from U.S. Attorney's Office to Hon. John M. Canella	16a
Defendant's Exhibit "B"	19a
Excerpts of Trial Transcript	23a
Charge of the Court	67a
Verdict of the Jury	120a
Sentencing	125a

DB:cmw
74-1285

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

DAVID WILLIAMS, AARON L. STEWART, REGINALD STITCH, a/k/a Boo, FRANK HENEGAN, ROBERT RUDDOCK, JAMES EVANS, SANDRA BECOTE and SHIRLEY HALL,

Defendants.

INDICTMENT

74 Cr. 498

COUNT ONE

The Grand Jury charges:

1. From on or about November 1, 1973 up to and including November 19, 1973, in the Southern District of New York and elsewhere, DAVID WILLIAMS, AARON L. STEWART, REGINALD STITCH, a/k/a Boo, FRANK HENEGAN, ROBERT RUDDOCK, JAMES EVANS, SANDRA BECOTE and SHIRLEY HALL, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together with each other, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 2113.

2. It was part of said conspiracy that DAVID WILLIAMS, AARON L. STEWART, REGINALD STITCH, a/k/a Boo, FRANK HENEGAN, ROBERT RUDDOCK, JAMES EVANS, SANDRA BECOTE and SHIRLEY HALL, the defendants, would unlawfully, wilfully and knowingly, by force and violence and by intimidation, take and attempt to take from the person and presence of another, property and money belonging to and in the care, custody, control, management and possession of the First National City Bank, located at 1855 Bruckner Boulevard, Bronx

New York ("First National City Bank"), the deposits of which were then insured by the Federal Deposit Insurance Corporation.

OVERT ACTS

In furtherance of this conspiracy, and to effect its objects, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about November 13, 1973 SHIRLEY HALL, defendant, entered the First National City Bank;

2. On or about November 15, 1973, DAVID WILLIAMS, AARON L. STEWART, REGINALD STITCH, A/k/a Boo, FRANK HENEGAN, ROBERT RUDDOCK, JAMES EVANS, SANDRA BECOTE and SHIRLEY HALL, the defendants, met together in the Bronx, New York;

3. On or about November 15, 1973, SANDRA BECOTE, defendant, wore a wig;

4. On or about November 15, 1973, JAMES EVANS and SANDRA BECOTE, defendants, entered the First National City Bank.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 15th day of November, 1973, in the Southern District of New York, DAVID WILLIAMS, AARON L. STEWART, REGINALD STITCH, a/k/a Boo, FRANK HENEGAN, ROBERT RUDDOCK, JAMES EVANS, SANDRA BECOTE and SHIRLEY HALL, the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, did take from the person and presence of another, property and money, including approximately $8,500, which belonged to, and was in the care,

custody, control, management and possession of the First National City Bank, 1855 Bruckner Boulevard, Bronx, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 15th day of November, 1973, in the Southern District of New York, DAVID WILLIAMS, AARON L. STEWART, REGINALD STITCH, a/k/a Boo, FRANK HENEGAN, ROBERT RUDDOCK, JAMES EVANS, SANDRA BECOTE and SHIRLEY HALL, the defendants, unlawfully, wilfully and knowingly, in committing and in attempting to commit the offense charged in Count Two of this indictment, did assault persons, and did put in jeopardy the lives of persons by the use of dangerous weapons and devices, to wit, firearms.

(Title 18, United States Code, Section 2113(d) and 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

J. C. Form No. 100

CRIMINAL DOCKET

JUDGE CANNELLA 74 CRIM. 498

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	Don Buchwald, AUSA
(1) DAVID WILLIAMS	264-6424
(2) AARON L. STEWART	
(3) REGINALD STITCH, a/k/a Boo	
(4) FRANK HENEGAN	
(5) ROBERT RUDDOCK	*For Defendant:*
(6) JAMES EVANS	
(7) SANDRA BECOTE	
(8) SHIRLEY HALL	

(01) ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBURSED
Fine,						
Clerk,	6	38				
Marshal,						
Attorney,						
Title 18						
USC, 371, 2113(a), (d).						
Consp. to rob bank (Ct. 1)						
Robbery of insured bank. (Ct. 2)						
Assault dur. bank robbery. (Ct. 3)						

DATE	PROCEEDINGS
7-74	Filed indictment. B/W ordered as to defts. Stitch & Hall. Gurfein, J.
20-74	Stewart (atty. present) Deft. produced on a writ. Pleads not guilty. Motions returnable in 10 days. Case referred to Judge Cannella. Bail fixed by the court at $10,000. cash. Writ satisfied.
	Evans (atty. present) Produced on a writ. Pleads not guilty. Motions ret. in 10 days. Bail fixed by Mag. continued. ($20,000. cash) Writ satisfied. Gurfein, J.
21-74	HENEGAN - Filed affdvt of D.D. Buchwald, AUSA in support of a writ.
21-74	RUDDOCK - Filed affdvt of D.D. Buchwald, AUSA in support of a writ.
21-74	HALL - Bench warrant issued.

— OVER —

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
5-28-74	S. BECOTE -Deft & atty.present PLEAD NOT GUILTY bail cont'd . as fixed by Magistrate at $5,000 P.R.B.		
	F.HENEGAN - Deft.Produced on a writ (No atty.) Court directs a plea of Not Guilty...Writ satisfied.		
	S.HALL - Deft & atty.present. Deft PLEADS GUILTY to Ct.1 only. P.S.I. ordered sentence 7-10-74..Bail cont'd as previously set by Magistrate at $5,000 P.R.B.....Cannella,J.		
5-30-74	F.HENEGAN - Produced on a writ(Atty.present)Deft PLEADS GUILTY to Ct.2..P.S.I. ordered. Sentence adjd to 7-11-74 Cts.1 and 3 open..Writ satisfied. Cannella,J.....		
5-31-74	R.RUDDOCK - Filed writ with marshal's return.& Affdvt.in support.		
****			
5-17-74	REGINALD STITCH - Bench warrant issued.		
6-3-74	JAMES EVANS -Produced on a writ.Atty.present..Deft PLEADS GUILTY to count 2 only. P.S.I. ordered Sent.7-3-74 Writ satisfied. Cts.1 and 3 remain open.		
	R.STITCH - Appears,atty.present. Deft pleads NOT GUILTY 10 days for motions. Case referred to Cannella, J. Bail fixed by Court at $10,000 cash or surety. Deft remanded in lieu of bail. Deft to be fingerprinted....Cannella,J.		
6-4-74	D.WILLIAMS - Deft produced on a writ...PLEADS GUILTY to count 2..P.S.I. ordered. Sent. adjd to 7-23-74..Writ satisfied..Cts.1 & 3 open...Cannella, J.		
6-6-74	S.BECOTE - Appears with atty. Deft PLEADS GUILTY to Ct.2..pre-sentence report ordered. Sentence adjd to Sept.16,1974..Bail cont'd as fixed by the Magistrate at $5,000 P.R.B. Cts.1 and 3 remain open.....Cannella,J.		
6-7-74	R.RUDDOCK - Filed CJA appointment of Robt.Mitchell 51 Chambers St. NYC Cannella,J.		
6-7-74	R. RUDDOCK - Produced on a writ.Atty.present. Court directs a not guilty plea be entered, 10 days for motions.....Cannella,J.		
6-12-74	R.STITCH -(Atty.present)withdraws plea of N.G. pleads GUILTY to Ct.2 only. P.S.I. ORDERED Sent.on 7-23-74 at 11a.m. Bail fixed at $10,000 with an alternative of $1,000 cash. Deft paroled in the custody of his atty.until 12 noon on 6-13-74 Bail condition:to report to AUSA Buchwald every 4th day until sent.day and make no effort to communicat or get in th the other deft's...Cannella,J.		

DATE	PROCEEDINGS
6-24-74	A.STEWART - Deft not present. Atty.appears on bail application..Bail reduced from $10,000 to $7,500 cash or surety to cover this indictment and 74Cr.501... deft remanded in lieu of bail....Cannella,J.
****	
6-13-74	R.STITCH - Atty.present, application for a continuance to 6-14-74 at 12 noon to post bail granted.....Cannella, J.
6-14-74	R.STITCH - Filed appearance bond in amt.of $10,000 secured by $1,000 cash.
7-1-74	A.L. STEWART.-Filed Pltffs Notice of Readiness For Trial.
7-3-74	Filed pltffs memorandum of law.
7-11-74	A.L. STEWART. Filed copy of a remand dated 6-24-74.
7-16-74	STITCH, R. Filed transcript of record of proceedings, dated 6-12-74.
7-23-74	STITCH, R. Filed remand with marshals return dated 6-3-74.
7-25-74	STEWART, A.L. Filed Court's Exhibit 2-3-4 Ordered Sealed and put into vault Clerk's Office Cashier's Sept Room 602 Cannella, J. (dated 7-24-74.)
****	
7-24-74	AARON L.STEWART-Jury trial begun before Cannella,J.
7-25-74	Trial cont'd.
7-26-74	Trial cont'd. Jury out.
7-29-74	Trial cont'd. and concluded - Jury disagreement,mistrial declared. Second trial on 9-9-74 at 10a.m. Room 1506...Cannella, J.
7-30-74	Filed transcript of record of proceedings, dated MAY 30, 1974
7-30-74	Filed transcript of record of proceedings, dated MAY 28, 1974
7-12-74	Filed transcript of record of proceedings, dated June 4, 1974
7-12-74	Filed transcript of record of proceedings, dated June 7, 1974
8-5-74	F.HENEGAN - Filed writ with marshal's return.
8-6-74	S. EVANS Filed transcript of record of proceedings, dated June 3, 1974
8-6-74	S. BECOTE - Filed transcript of record of proceedings, dated June 6, 1974
8-14-74	R.STITCH - Filed warrant with marshals return.
8-22-74	D.WILLIAMS - Filed affdvt. of D.D.Buchwald,AUSA dtd.8-2-74 in support of a writ.
8-22-74	Filed affdvt.of D.D.Buchwald,AUSA in support of a writ for Frank Henegan.
9-5-74	A. STEWART - Filed transcript of record of proceedings dated July 24, 25, 1974

— See over

DATE	PROCEEDINGS
9-9-74	Second trial begun BEFORE CANNELLA, J..with jury as to AARON L.STEWART
9-10-74	Trial cont'd.
9-11-74	Trial cont'd.
9-12-74	Trial cont'd. and concluded..Deft GUILTY one each of counts 1.2 & 3. Sent.on 11-7-74 10 a.m. Rm.35 Bail cont'd.....Cannella,J.
10-2-74	JAMES EVANS - JAMES EVANS - Filed Judgment(Atty.Ronald Veneziano present)Deft is committed for imprisonment for a period of EIGHT YEARS...Counts 1 and 3 are dismissed on motion of deft's counsel with the consent of the Govt....Deft is remanded.....Cannella, J.....Ent. 10-4-74
10-3-74	DAVID WILLIAMS - Filed Judgment(Atty.Robert J.Lazarus present)Deft is committed for imprisonment for a period of ELEVEN YEARS to run concurrent with sentences imposed in indictment 74Cr.52 Eastern District Of New York and indictment 74Cr.196 Southern District of New York...Counts 1 and 3 are dismissed on motion of deft's counsel with the consent of the Govt....Deft is remanded.....Cannella, J.... Ent.10-4-74.
10-8-74	AARON STEWART - Filed papers recv'd from magistrate, docket sheet & appearance bond.
~~10-7-74---FRANK HENEGAN---FRANK HENEGAN~~	
10-7-74	FRANK HENEGAN - Filed Judgment(Atty.Peter Passalaqua,present)the deft is committed for imprisonment for a period of SEVEN YEARS pursuant to Ti.18,U.S.Code, Section 4208(a)(2), to run concurrent with the sentence imposed in indictment 74Cr.52 Eastern District of New York..Counts 1 & 3 are dismissed on motion of deft's counsel with the consent of the Govt.....CANNELLA, J.
10-9-74	SHIRLEY HALL - Filed papers recv'd from magistrate: docket sheet, warrant, disposition sheet, appointment of counsel, notice of appearance and appearance bond
10-10-74	REGINALD STITCH - Filed Judgment(Atty.George Feit,present)the deft is committed for a period of EIGHT(8)YEARS....Counts 1 and 3 are dismissed on motion of deft's counsel with the consent of the government.....Cannella, J.....Ent.10-11-74---
10-10-74	SHIRLEY HALL - Filed Order and Commitment(Atty.Abraham L.Schwartz,present) the deft is committed to the Atty.Gen'l. for Observation and study at an appropriate center or agency...Within SIXTY DAYS from the date of this order, or such additional time as the Court may grant, the division shall report to the Court its findings. At which time the deft shall be returned to this Court for the imposition of such sentence as the Court may then find appropriate all pursuant to Ti.18,U.S.Code, Section 5010(E). The Court desires additional information as to whether or not this Youth Offender will derive benefit from treatment under Ti.18, U.S.Code, Sec. 5010(b) or (c).....Cannella, J.
10-11-74	SHIRLEY HALL - Atty.present, Order dated 10-10-74 is VACATED study & report to be made up to date from Prob. Dept. by 11-1-74 at 10 A.M. Bail conditions are reinstated....Cannella,J.....
10-11-74	D. WILLIAMS - Filed transcript of record of proceedings, dated 6-4-74.

- CONT PAGE 5 -

DATE	PROCEEDINGS
10-11-74	D.WILLIAMS - Filed affdvt. of Don D.Buchwald, AUSA in support of a writ.
10-15-74	SHIRLEY HALL - Filed order that deft be examined by a psychiatrist****and that she return to this Court on Nov.1-74***for imposition of sentence..... Cannella,J.....
10-10-74	DAVID WILLIAMS - Filed writ with marshal return.
10-17-74	F. HENEGAN — Filed commitment & entered return, Deft delivered to Lewisburg Pa
10-17-74	R. STITCH Filed commitment & entered return, Deft delivered to F.D.H. N.Y.
~~10-18-74~~	~~A.T.WINTERS---Filed-Waiver-of-trial-by-jury----Approved.DUFFY,J.--~~ Ent.in error Wrong docket sheet
~~10-18-74~~	~~P.ROBERTS---Filed-waiver-of-trial-by-jury----Approved.-DUFFY,J.~~
10-17-74	ROBERT RUDDOCK - Filed writ of H/C Ad.Test. with marshal's return.
10-21-74	S.HALL - Filed order that Dr.Norman Weiss be engaged as a psychiatrist***fee not to exceed $150.00.
10-17-74	R.STITCH — Filed remand dated
10-23-74	FRANK HENEGAN - Filed order that Peter A.Passalacqua 32 Court St.Brooklyn,N.Y. is added to Panel of Atty's****nunc pro tunc.....Edelstein,Ch.J.
10-31-74	A.L.STEWART - Filed affdvt.of Don D.Buchwald,AUSA DATED 10-31-74..
10-22-74	ROBERT RUDDOCK - Filed affdvt.of D.D.Buchwald,AUSA FOR a writ ret.10-24-74
11-1-74	SHIRLEY HALL - Filed Judgment(Atty.Abraham L.Schwartz,present)Imposition of sentence is suspended on count 1. Deft is placed on probation for a period of FIVE YEARS, subject to the standing probation order of this Court, pursuant to Ti.18,U.S.Code, Sec. 5010(a)....Counts 2 and 3 are dismissed on motion of deft's cpunsel with the consent of the govt.....CANNELLA, J....Ent.11-1-74--
11-4-74	ROBERT RUDDOCK - Filed notice of readiness for trial.
11-7-74	AARON L. STEWART - Filed Judgment(#74,873)Atty.David A.Pravda,present..The deft is committed for imprisonment for a period of FIVE YEARS on count 1, and Fined $10,000.00. TEN YEARS on count 2, and FINED $5,000.00. TEN YEARS on count 3, and FINED $10,000.00, each to run concurrent with the other, and Total fine of $25,000.00. Non-committed fine....Deft Remanded.....Cannella,J..Ent.11-8-74
11-7-74	AARON L. STEWART - Filed notice of appeal from judgment of 11-7-74.. Copy given to U.S.Atty. & mailed to David A.Pravda,Esq. 10 E. 40th St. NYC..Leave to appeal in forma pauperis granted....Cannella, J.
11-11-74	R.STITCH - Filed memo endorsed on letter dated 10-30-74****Motion denied... Deft notified.... Cannella,J.....
11-13-74	JAMES EVANS-Filed commitment & entered return, Deft delivered to USP LEWISBURG, PA. on 11-8-74.
11-13-74	REGINALD STITCH a/k/a STITCH. Filed commitment & entered return, Deft delivered to U.S.P. Lewisburg, Pa. on 11-1-74.

DATE	PROCEEDINGS
11-15-74	A.L.STEWART - Filed commitment & entered return. Deft delivered to Fed. Detention, NYC
11-18-74	A.L.STEWART - Filed original record on appeal***with U.S.C.A.
Nov.22-74	SANDRA BECOTE - Filed consent order that deft be permitted to visit her great grandmother.....Cannella,J.
Nov.25-74	A.L.STEWART - Filed stip.& order that Court's exhibits 2,3 and 4 filed 7-25-74 ordered sealed, shall be a part of the record on appeal Etc.....Cannella,J.
Nov.25-74	A..L.STEWART - Mailed Original CJA copy 1 to A.O. Wash.D.C. for payment...Cannella,J.
Nov.26-74	S.HALL - Mailed original CJA copy 1 to A.O.Wash. D.C. for payment...Cannella,J.
11-27-74	R.RUDDOCK - Filed writ with marshal's return...Returnable 10-24-74---
11-26-74	A..L.STEWART- Filed notice that supplemental record on appeal has been certified and transmitted to the U.S.C.A.
12-19-74	ROBERT RUDDOCK - Deft produced on a writ..Atty.present,plea adjd to 1-29-75 at 9:30 to await report from psychiatrist...Cannella,J.
12-20-74	ROBERT RUDDOCK - Filed memo endorsed on letter dtd.12-16-74 ***The Court has read and considered the deft's letter and nothing contained therein persuades the Court that the sentence heretofore imposed should be modified.****The Clerk of the Court is directed to forthwith direct a certified copy of this endorsement and order to the Director of the Bureau of Prisons***and Warden of Lewisburgh Correctional Facility. Cannella,J...Copies mailed.....
12-26-74 ***	R.RUDDOCK - Filed affdvt.of D.D.Buchwald,AUSA in support of a writ..Ret.12-19-74
12-24-74	ROBERT RUDDOCK - Filed order pursuant to 18 U.S.C.4244 appointing Dr.Naftali Eskreis to examine deft...Cannella,J.
2-18-74	Filed transcript of record of proceedings, dated Oct 9-11-74; Nov 7-74
1-7-75	S.HALL - Mailed original CJA copy 1 to A..O. WASH.D.C. for payment..Cannella,J.

United States Department of Justice

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

DB:Lm

73-3665-73-1285

May 28, 1974

David A. Pravda, Esq.
10 East 40th Street
New York, New York 10016

Re: United States v. Aaron L. Stewart;
74 Cr. 501 (Oct. 15, 1973 bank robbery, Kingston, N.Y.
File #73-3665; and 74 Cr. 498
(Nov. 15, 1973 bank robbery,
Bronx, New York.
File #73-1285

Dear Mr. Pravda:

I am writing to confirm the substance of our conference today pertaining to discovery in the above matters.

With respect to 74 Cr. 501:

(1) I have advised you that the government will contend that the following individuals were co-conspirators with respect to the Kingston bank robbery. David Lewis, David Williams, Janet Irene Awkard, Arthur Hendrix, Joseph Daniels and Edward Taylor;

(2) Lewis, Williams and Awkard were indicted in connection with the Kingston bank robbery (74 Cr. 196) and have pled guilty to violations of 18 U.S.C. §2113(d);

(3) Taylor was shot to death on November 17, 1973 in Queens, New York;

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73-3665
73-1285

(4) Daniels was shot to death on December 13, 1973 at his home on Queens, New York;

(5) You requested and I declined to provide you with further particulars concerning the overt acts listed in the indictment;

(6) I have advised you that more than one gun was displayed by the participants in the bank robbery (no guns were fired during the robbery) and have declined to provide you with further descriptions of the guns displayed;

(7) I have advised you that all bank surveillance photographs will be made available for your inspection;

(8) I have advised you that I am not aware of any statements having been made by your client to law enforcement authorities with respect to this matter. You declined our invitation to have your client appear before the Grand Jury and he did not appear;

(9) I have advised you that I am not aware of any wiretaps, bugging or electronic surveillance in connection with the investigation of this matter;

(10) I have advised you that there has been photospread identification of your client by accomplices;

(11) I have declined to provide you with further details of the events at the bank during the course of the robbery;

(12) I have advised you that the robbery occurred at approximately 9:15 a.m. on October 15, 1973;

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73-1285

(13) You have requested a copy of your client's "rap sheet". I have declined to furnish you with same on the grounds that the information as to your client's previous convictions is as readily available to you as it is to the government;

(14) I have advised you that no arrest warrant was obtained against your client in connection with this matter.

(15) You have requested and we will provide you in timely fashion with any Brady material which comes to our attention.

With respect to 74 Cr. 498:

(1) I have advised you that the David Williams named in this indictment is the same David Williams as pled guilty in connection with the Kingston bank robbery;

(2) I have advised you that all known co-conspirators are named in the indictment;

(3) I have declined to discuss the status of any other named defendants with you. You were, of course, present in Court on May 28, 1974 when the defendant Shirley Hall entered a guilty plea in connection with the indictment;

(4) I have advised you that pistols and a shotgun were displayed during the course of the robbery. I am further advised that a fake grenade was displayed. No guns were fired during the robbery. I have declined to provide you with further descriptions of the firearms displayed;

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73-1285

(5) I have declined to provide you with further particulars concerning the overt acts listed in the indictment. The Government will contend that you client, Aaron Stewart, was physically present in the bank during the course of the robbery;

(6) I have advised you that all bank surveillance photographs will be made available for your inspection;

(7) I have advised you that there has been photospread identification of your client by accomplices;

(8) I have advised you that I am not aware of any wiretaps,,bugging or electronic surveillance in connection w th the investigation of this matter;

(9) You declined our invitation to have your client appear before the Grand Jury and he did not appear;

(10) I have advised you that I am not aware of any fingerprint identification of your client having been made. I will advise you if such fingerprint identification is made.

(11) You have idicated your awareness of the fact that your client was arrested in connection with this matter on May 10, 1974 on basis of an arrest warrant issued on May 8, 1974 by Magistrate Schreiber;

(12) I have declined to provide you with further details of the events at the bank during the course of the robbery;

(13) I have declined to provide you with a copy of your client's rap sheet on the same grounds as indicated above;

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73-3665
73-1285

(14) You have requested and we will provide you in timely fashion with any Brady material which comes to our attention.

(15) We will provide you with copies of statements made by your client pursuant to Rule 16. In that respect, enclosed herewith are:

(a) A copy of United States Attorney Form 306, dated May 10, 1974 (consisting of three pages); and

(b) A copy of an FBI report, dated May 13, 1974 of a May 10, 1974 interview of your client (consisting of three pages);

I have further advised you that in the event that your client is the only defendant who will be going to trial on 74 Cr. 498, the government will request that the trials on the two indictments be consolidated.

You have indicated that you may file a formal discovery motion. Please consider this letter our response to such matters which we discussed which are included within your formal motion.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: Don D. Buchwald
DON B. BUCHWALD
Assistant United States Attorney
Telephone: (212) 264-6424

cc: Honorable John M. Cannella
United States District Judge
Southern District of New York

United States Department of Justice

ADDRESS REPLY TO "UNITED STATES ATTORNEY" AND REFER TO INITIALS AND NUMBER

DEB:ais

73-1285

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

July 1, 1974

Honorable John M. Cannella
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Aaron L. Stewart
74 Cr. 501, File #73-3665; and
74 Cr. 498, File #73-1285

Dear Judge Cannella:

During the course of informal discovery in the above matters, David Prävda, Esq., counsel for the defendant Aaron Stewart, requested that the Government make available to him under Brady v. Maryland, information in its possession concerning the shooting deaths of Joseph Daniels (on Dec. 13, 1973) and Edward Taylor (on Nov. 17, 1973). Daniels and Taylor are believed by the Government to have been co-conspirators with respect to the robbery of the Heritage Savings Bank in Kingston, New York, on October 15, 1973, which is the subject of Indictment 74 Cr. 501.

Both Daniels and Taylor were shot to death in Queens, New York and both murders are the subjects of pending investigations by the Queens District Attorney's Office.

It is anticipated that at the trials of Aaron Stewart on 74 Cr. 501 (the Oct. 15, 1973 Kingston bank robbery) and 74 Cr. 498 (the Nov. 15, 1973 Bruckner Blvd. bank robbery), certain co-conspirators and/or co-defendants

DBB:ais
73-1285

will be called to testify as government witnesses. Certain of these co-conspirators, I am advised, have made statements to the FBI and/or the Queens District Attorney's Office concerning the two homicides. These statements to some extent are self-incriminating and to some extent tend to incriminate in the homicides yet other co-conspirators who the government also may call in the trial of Aaron Stewart.

The Government does not believe that the names of those individuals who have made statements concerning the Queens homicides are relevant to the question of the guilt or innocence of Aaron Stewart on the bank robbery charges. The Government does not believe that the information contained in the statements of these individuals relating to the pending Queens homicide investigations is relevant to the guilt or innocence of Aaron Stewart on the bank robbery charges.

In view of Mr. Pravda's request, while we are of the belief that such information does not fall within the scope of Brady v. Maryland, the Government is prepared, however, to advise Mr. Pravda that based on the statements made by certain of the co-conspirators, the following individuals who possibly will be called as government witnesses at Stewart's trials, may have been involved in the Queens homicides:

1. Edward Taylor's murder: David Williams and Frank Henegan; (I am advised by the Queens District Attorney's Office that Williams and Henegan have been indicted for murder in connection with Taylor's homicide)

2. Joseph Daniel's murder: David Williams, Frank Henegan, Robert Ruddock, James Evans and Reginald Stitch.

DBB:ais
73-1285

A copy of this letter is being forwarded to Mr. Pravda, together with a copy of the accompanying Memorandum of Law setting forth the Government's position on the permissible scope of cross-examination.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: S/
DON D. BUCHWALD
Assistant United States Attorney
Telephone (212) 264-6424

cc: David Pravda, Esq.
10 E. 40th St.
New York, N. Y. 10016

Government's Exhibit 3509-E for Identification; Def't's Ex. "B" in Evidence

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 1/17/74

ROBERT RUDDOCK was advised of the identity of the interviewing agents as Special Agents of the Federal Bureau of Investigation (FBI), and that the interview pertained to his possible involvement in a bank robbery in the New York area. He was immediately advised of his rights, in accordance with the "Interrogation; Advice of Rights" form, which he read, stated he understood, but refused to sign. He stated that he wished to talk to the agents, and did not want a lawyer at this time.

He advised his name is ROBERT RUDDOCK, Date of Birth July 21, 1944. He stated he was in State Prison on a murder charge, and was out on furlough in the Fall of 1973, sometime in October. He stated that there is a murder warrant outstanding for him in Queens. He stated that an individual he knows as DAVID WILLIAMS, has been dating his sister, ARLENE RUDDOCK. He stated that WILLIAMS had told him that he had been involved in bank robberies, and had been arrested in the past for bank robbery, along with some other people that he had worked with.

RUDDOCK stated that approximately one day prior to November 15, 1973, WILLIAMS approached him and asked him to participate in a bank robbery on November 15, 1973. WILLIAMS stated he had cased the bank, and had laid out the plans for the robbery.

At approximately 6:00 A.M., on the morning of November 15, 1973, he met DAVID WILLIAMS at the corner of Pennsylvania Avenue and Linden Boulevard, in Brooklyn. WILLIAMS was driving a green Oldsmobile Cutlass. They drove to 125th Street, between Seventh Avenue and Eighth Avenue, in Manhattan. At that location, they met an individual known to him as FRANK HENEGAN, and BOO Last Name Unknown (LNU). HENEGAN and BOO LNU arrived at that location in a brown Plymouth Valiant, driven by HENEGAN. A Negro female was also introduced to him at this location, as SANDRA LNU. After they discussed the planned bank robbery, WILLIAMS, BOO LNU, and SANDRA LNU left for the Bronx, in a green Cutlass, driven by WILLIAMS. HENEGAN told him (RUDDOCK), to wait in the brown Valiant, and HENEGAN

1/15/74 at New York, New York File # NY 91-13636-

SAS EDWARD T. WALKER and
J. GARRY DI LAURA/ETW:cau Date dictated 1/17/74

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went to get a U-Haul truck he had rented for the robbery. Shortly thereafter, HENEGAN returned in the U-Haul truck, and instructed RUDDOCK to follow him to the Bronx in the brown Valiant. RUDDOCK stated he followed HENEGAN up to the Bronx, and that the U-Haul truck broke down on Bruckner Boulevard. At this time, HENEGAN got back into the Valiant, and he and HENEGAN drove up to a White Castle Diner, on Bruckner Boulevard, near the First National City Bank, 1855 Bruckner Boulevard. At the White Castle, he and HENEGAN met DAVID WILLIAMS, SANDRA LNU, BOO LNU, and a Negro male, whose identity was unknown to him. He and HENEGAN informed WILLIAMS that the U-Haul truck had broke down, and WILLIAMS instructed BOO LNU and HENEGAN to get another truck. In about one hour, BOO LNU and HENEGAN returned to the White Castle in a white van truck, with lettering indicating that it belonged to a Muslim group. At this time, they left the cars at the White Castle, and everybody got into the back of the van. They drove to approximately one block from the bank, at which time, SANDRA LNU and one of the other men, whose identity he cannot recall, got out and walked to the bank. They pulled the truck into a parking lot behind the bank. They then walked into the bank. BOO LNU announced the hold up. He was armed with a fake hand grenade. He (RUDDOCK) stood by a window as a lookout, armed with a 38 caliber revolver. HENEGAN stood inside the bank, armed with a sawed-off shotgun. SANDRA LNU and the unknown Negro male went over to the counter and obtained the loot. WILLIAMS stood outside the bank in the parking lot. After they had obtained the loot, they exited the bank and got back into the white van. Inside the van they changed their clothes and drove to the White Castle. They abandoned the truck on the access road of Bruckner Boulevard, near the White Castle Diner, leaving the doors open on the white van. They put the loot in the green Cutlass, and the guns in the brown Plymouth Valiant. SANDRA LNU, BOO LNU, and WILLIAMS left in the green Cutlass, and FRANK HENEGAN, the unknown Negro male, and he (RUDDOCK), left in the brown Valiant. They drove to an unknown location in Long Island, most likely Nassau County, and met in someone's home. At this location, they split up the money.

RUDDOCK stated he got about $1,100, for his part in the bank robbery.

RUDDOCK provided the following descriptions:

BOO LNU

Negro male, age 27, height 5 feet 11 inches, build medium, complexion light, hair reddish brown Afro, resides in the vicinity of 104th Street to 106th Street, Manhattan, West Side.

SANDRA LNU

Negro female, age late thirties, height 5 feet 6 inches, well built.

Unknown Negro male

Negro male, age 27, height 6 feet 2 inches to 6 feet 3 inches, well built, complexion brown, resides in the area of East 96th Street, Manhattan, recently on parole.

RUDDOCK observed photographs of DAVID WILLIAMS and FRANK HENEGAN, and stated that they were photographs of the two individuals he is referring to.

RUDDOCK advised he was involved in a total of three bank robberies with DAVID WILLIAMS and other individuals.

The Bruckner Boulevard job was the first of these three bank robberies. The second bank robbery occurred on a cold icy day, in a bank on Linden Boulevard, in Brooklyn. He cannot recall the exact date, but believes it was December 17, 1973. DAVID WILLIAMS, FRANK HENEGAN, BOO LNU, and he were involved in the Linden Boulevard bank robbery. RUDDOCK stated that BOO LNU is identical to BOO LNU, who participated in the Bruckner Boulevard bank robbery.

RUDDOCK stated that the third bank robbery occurred after Christmas, and before New Years. He could not recall the specific date, but believes it was December 28, 1973, or very close to December 28, 1973. The individuals involved in

this bank robbery were DAVID WILLIAMS, FRANK HENEGAN, BO LNU, the unknown individual who had participated in the Bruckner Boulevard bank robbery, DAVID LEWIS, and himself.

RUDDOCK advised that the above mentioned BO LNU is described as follows:

Negro male, age 34 - 35, 6 feet 1 inch to 6 feet 2 inches, slender build, high cheekbones, lives at DAVID WILLIAMS's residence in Brooklyn, at 197 East 52nd Street or Schenck (phonetic) Street. BO has a new Pontiac Grand Prix. BO is DAVID WILLIAM's old partner from California.

RUDDOCK stated that WILLIAMS had told him that he and his friends had been involved in several bank robberies, and that each man who was partaking in a given bank robbery, had a specific prearranged assignment. This included men responsible for securing the bank, keeping the time in the bank, scooping the money, and providing a getaway car. RUDDOCK stated at this point, that he was tired, and wished to provide the specific details of the other two bank robberies in the form of a signed statement tomorrow. He requested the interviewing agents to return the next day.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
vs.	74 Cr. 498
AARON L. STEWART,	
Defendant.	

Before:

HON. JOHN M. CANNELLA,

District Judge.

New York, September 9, 1974;
2.30 o'clock p. m.
(Room 1506)

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the
Southern District of New York;
BY: DON D. BUCHWALD, Esq.,
Assist United States Attorney.

DAVID A. PRAVDA, Esq.,
Attorney for Defendant.

INTERVENING PAGES OF TRANSCRIPT OMITTED

A Yes, Chris was there. Boo Boo was there. Frank. Quite naturally, Dave. Shirley, and myself. I think Sandra was present too, if I'm not mistaken.

Q What about Aaron Stewart?

A No, sir.

Q What happened after your conversation with David Williams at the Korvette shopping center -- withdrawn.

When was this conversation in relation to the day of the robbery?

A It was Monday, if I'm not mistaken, because the robbery took place on a Thursday.

Q This was a few days before the robbery itself?

A Yes, sir.

Q What if anything did you do after this conversation with David Williams at the Korvette Shopping Center in the Bronx?

A Well --

MR. PRAVDA: Objection, your Honor. The defendant was not even present when any of this is alleged to have occurred. It doesn't relate to him.

THE COURT: The charge involved in Count 1 of this indictment is a conspiracy charge. The law of conspiracy is such that in order to develop the conspiracy it is sometimes necessary to take evidence subject to connec-

tion, which in effect means that if it is connected properly, even though the other fellow was not there, it may be binding upon him. It would be under the circumstances. A conspiracy is defined by Congress in this fashion;

If two or more persons conspire, agree, confederate to commit an offense or to defraud the United States and then they do something in furtherance of that agreement, that is a crime in and of itself, even though they never consummate what they were agreeing to do, in this case a bank robbery.

Congress has seen fit to categorize and to make a crime the agreement to commit a crime, because they feel that when people confederate and agree together, that is a threat to our society and, therefore, it is a serious matter; and they have made it a crime.

In order to develop this, evidence must be received and the evidence generally proceeds in this fashion:

First you must show that there is a conspiracy, an agreement between two or more persons. That is done by examining the acts and declarations of all the parties involved, so you must look at the total evidence to discover whether this is a conspiracy.

No. 2, if there is a conspiracy, that is, the

agreement, and an act done in furtherance of it which completes a conspiracy, then the next thing you must determine is, was a particular defendant involved, in this case, Stewart, a member of the conspiracy, and how you determine that is to examine all the evidence in the case and to make a determination after you examine the evidence whether or not in fact he was a member of the conspiracy. And then, lastly, there must be an overt act performed.

Those are the three things required for proof of the conspiracy. An overt act may be an innocent act. If, for example, in going to rob a bank, for example, and you wanted to do it in the night time; if there is an agreement between two or more persons, that itself would not be sufficient. So there must be something done in furtherance of it, an overt act. That may be an innocent act, may be a legal act. For example, under those circumstances one of the parties might say, well, you get a car and I will get a flashlight, because we'll need it, it's going to be in the night time.

That person can go to the five and ten, which is perfectly legal, and by a flashlight, which is perfectly legal; and then bring it to the scene and use it for the purposes of the robbery, and that comples the conspiracy. The act and declarations of parties who

are in a conspiracy are binding on all the conspirators. It's like a partnership in crime.

It's not necessary for him to be present or even know about it, provided, of course, you are satisfied by credible evidence beyond a reasonable doubt that a conspiracy did exist and that he is a member of it. So I am taking this evidence subject to connection.

If you find that there is a conspiracy in this case and then if you find further that the defendant Stewart was a member of the conspiracy, then what was said in furtherance of the conspiracy is binding on him, whether he was there or not.

If it is not found by you to be so, the motion can be made by the defendant to strike that evidence -- not if you find it, but if I find it during the course of the trial that there was not a conspiracy and this defendant was not connected with it, I will entertain a motion to strike that evidence, and then you will not consider it in this case. So I am taking this evidence subject to connection.

Q Mr. Evans, turning now to after you completed your conversation with David Williams at the Korvette shopping center, what if anything did you do?

A I went back to the car that I originally came up.

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said, part of my job was to open up the side door so that Sandy could come through, because she had indicated she couldn't jump the counter. But I had forgot to make this move and she was helped over the counter. I proceeded to empty the drawers.

Q When these other people came in, they were wearing masks?

A Yes, sir.

Q Did they have any weapons that you could see?

A Yes, sir. There was two or three also that came in without masks. They had weapons. Like I said, Boo Boo had what is known as a simulated handgrenade. Frank had a shotgun. Chris had a pistol, and I don't recall Aaron, whether he had a pistol or not, because to be perfectly frank, I wasn't payin ghat much attention to them. My main concern was to get as much cash as possible from the drawers with in the time possible or I am allotted, and to get out of there.

Q Were there customers in the bank?

A I know that there were other people in the bank, but as far as customers, I didn't notice anyone making any transactions or anything, but I know that there were people moving around.

Q What did they do during the robbery?

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another bank robbery in December of 1973, of a Manufacturers Hanover Bank; is that correct?

A Yes, sir.

Q Have you been charged with that crime?

A No, I haven't, sir.

Q Do you know what district that case is pending in?

A In the Eastern District, sir.

Q Is that Brooklyn?

A Yes, sir.

Q Are you aware whether or not the prosecutor in that case is aware that you have pleaded guilty in this case and are testifying?

A Me myself, I couldn't say that I am aware of this. I would imagine he would know.

Q Are you hopeful that in fact you will not be indicted in the Brooklyn case?

A Yes, sir, I am.

Q And is your hope that you won't be indicted for the Brooklyn bank robbery based at least in part upon your cooperation in this case?

A In part, yes, sir.

Q Do you know who Joe Daniels is?

A I refuse to answer that question on the ground

that it might tend to incriminate me, sir.

Q Do you know who David Lewis is?

A Not by that name, sir.

MR. PRAVDA: I have no other questions.

THE COURT: Do you have any questions?

MR. BUCHWALD: Yes, your Honor.

THE COURT: We will continue on tomorrow.

As you know, I must admonish you, you may not discuss this case amongst yourselves nor with anyone else nor form or express an opinion in this matter until it is submitted to you for your decision. Please keep that in mind. It is very important because these lawyers want your judgment, not somebody else's judgment which you form by virtue of discussing the case with them. So please don't do that until the case is over.

We will reconvene tomorrow at 10 o'clock. Please be here on time.

(The jury left the courtroom.)

(Adjourned to September 10, 1974, at 10.00 o'clock a.m.)

UNITED STATES OF AMERICA

vs. 74 Cr. 498

AARON L. STEWART.

New York, September 10, 1974;
10.10 o'clock a. m.

(Trial resumed.)

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(In the courtroom - in the absence of the jury.)

MR. BUCHWALD: Good morning, your Honor.

Miss Becote, who is to be a Government witness and who testified at the last trial, is present this morning. She has a very young child, I believe 11 or 12 days old, who has a doctor's appointment at 12.30. She must be in Manhattan at 12.30 and she must go to the Bronx to pick up the child first. We request the Court's permission to take her out of turn at the start of the trial this morning, and then after her testimony, complete Mr. Evans' testimony.

MR. PRAVDA: No objection.

THE COURT: All right.

MR. PRAVDA: Your Honor, I have a motion.

I was given yesterday 3500 material on a gentleman by the name of Robert Ruddock, who the Court will recognize as being one of the participants in this robbery who was not a witness on the first trial and who I suspect will be a witness in this trial. I'd like to move at this time to move to dismiss the indictment on behalf of this defendant on the grounds that specifically the document which has been denominated by the Government 3509-E which is an FBI report dated January 17, 1974, that is the date of the transcription, the date of the report is January 15, 1974, which I assume has been in the Government's possession for a long time, contains exculpatory material which was not furnished to the defendant for the first trial in accordance with Brady against Maryland.

And specifically the exculpatory material which I refer to, your Honor, is that the entire report sets forth the participants in the bank robbery of November 15, 1973 without setting forth any mention whatsoever of Aaron Stewart.

In addition, it does mention that there was one unknown Negro male and provides a description of that person and a description of the role of that person in the bank robbery, which makes it clear that he is referring to James Evans. And there is no mention whatsoever of Aaron

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Stewart.

Upon those grounds I would move to dismiss the indictment.

MR. BUCHWALD: Your Honor, I don't believe that Mr. Pravda has stated a valid ground for dismissing the indictment. In addition, I should wish to point out that there are others who have since pled guilty who are not named in Mr. Ruddock's original statement. Mr. Pravda will have ample opportunity to cross-examine Mr. Ruddock if he is called in as a Government witness on the basis of the statement. If he is not called as a Government witness, Mr. Pravda will also have the option of calling Mr. Ruddock. Mr. Ruddock is available and is here on a writ.

I would also for the record, your Honor, indicate that on the basis of my discussions with Mr. Ruddock there is absolutely nothing that needed to be turned over to Mr. Pravda on Brady versus Maryland.

THE COURT: I reserve decision on that.

Mr. Pravda, I don't intend to be critical, but would you get here on time?

MR. PRAVDA: Your Honor, I apologize. I was in the building on time, but it took me eight minutes to get on the elevator.

INTERVENING PAGES OF TRANSCRIPT OMITTED

Q Did you tell anybody there that this grenade didn't work?

A No.

Q I take it that there were two people who entered the bank originally?

A Right.

Q Those were who?

A James and Sandra.

Q And then who entered?

A Well, I don't remember exactly the order, but the rest of the fellows came into the bank.

Q Who are you referring to?

A Myself, Frank, Chris and Aaron.

Q You had a simulated grenade?

A Yes.

Q Did anyone else have a weapon of any kind?

A Everyone had weapons. You know, with the exception -- like all the fellows I know had weapons. I can't speak for Sandra, I don't know. I don't remember.

Q Do you recall what kind of weapons people had?

A Everyone with the exception of myself had pistols and Frank Jenegan had a sawed-off shotgun.

Q Were there customers in the bank?

A Yes, there were.

INTERVENING PAGES OF TRANSCRIPT OMITTED

on, but I would just like to ask one or two questions.

BY THE COURT:

Q The other fellows that were in there with weapons, did you actually see the weapons?

A Yes.

Q Did you handle them in any way?

A Well, I believe after we had gotten back to the house I had picked up the sawed-off shotgun or something. But to say I really sat down and handled each and every gun, no.

Q What is your best recollection of what the guns looked like that the others had, and if you can name the person, name the person?

A Well, Frank had a sawed-off shotgun and I think only one person -- I don't really remember who it was, had their own pistol; and David had about, I think about three. I think there was two 38's and a 32.

Q What about the ammunition? Did you know if there was any ammunition?

A I couldn't say that I sat down and watched them load the guns or unload the guns. But I assume that the guns were --

MR. PRAVDA: I object to what he assumed.

Q Not what you assume. You don't know of your

own knowledge?

A No.

THE COURT: We will recess and we will continue on.

Please don't discuss the case in the meantime.

(The jury left the courtroom.)

(Recess.)

(In the courtroom - in the presence of the jury.)

MR. PRAVDA: Your Honor, I would like to have a short side bar.

(At the side bar.)

MR. PRAVDA: Judge, I just want to bring this up as a matter of housekeeping because I don't want to overstep the bounds.

In Mr. Buchwald's direct examination of this witness he didn't elicit any criminal background at all, and the copy of the arrest record that I have indicates things which are charged as felonies, of course, but they unfortunately as is always the case in these things, they don't really always give you the disposition. So I don't know whether they turned out to be misdemeanors when he was convicted and I don't want to ask questions in an area which I am prohibited from doing so.

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A (No response.)

Q Or was it just commonly decided between you?

A It was more or less commonly decided between us because what was convenient for who to do.

Q So then you would say that the group was more or less without a leader, you more or less all understood one another and you knew what you were going to do?

A Yes.

Q That was it?

A Yes.

Q How about the question of being armed, did that ever come up?

A Yes.

Q When?

A I believe at the meeting at Sandra Becote's house.

Q What was said at that time?

A I believe Reginald Stitch said that he had a dummy handgrenade and I had my own pistol; Frank Henegan had his; and I believe James Evans borrowed one from one of us.

Q What kind of a pistol did you have?

A It was a 38.

Q Did you bring that up to the Bruckner Boulevard

place?

A Yes.

Q Did you have it with you at the time?

A Yes.

Q Were there any bullets?

A Yes.

Q The gun was loaded?

A Yes.

Q What about the others, did you know if their guns were loaded?

A I can assume they were loaded.

Q No assumptions. Of your own knowledge.

Did you see them load or did you see ammunition or anything like that?

A Yes, there were bullets in the gun.

Q That is your present recollection, that there were bullets in the gun also?

A Yes.

THE COURT: All right.

Anything else?

MR. BUCHWALD: No further questions, your Honor.

THE COURT: All right.

You may step down.

(Witness excused.)

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A No, not at once.

Q Let the Court and jury know who went in first and what happened?

A The girl Sandy and James Evans went in first. Either Reginald Stitch or Aaron Stewart went in second. I went in next to last. Dave Williams stayed outside the bank.

Q When you went into the bank what were you wearing?

A I was wearing a short coat, a ski jacket with the hood on it and a ski mast.

Q Did you have the mask pulled down over your face?

A When I got to the bank I pulled it down.

Q When you entered the bank?

A Right.

Q What about the others? Were the other people wearing disguises or masks?

A Yes. Everybody but the girl.

Q The girl didn't have a disguise or mask?

A All she had was a wig on.

Q This was who?

A Sandy.

Q Were you armed at all?

A Yes.

Q What kind of weapon did you have?

A I had a shotgun.

Q Who had what kind of weapon?

A Everybody else had a pistol except the girl Sandy and James Evans.

Q What did you do once you got inside the bank?

A My job was to stand by the door and keep the time. We were only supposed to stay in the bank about 45 seconds to a minute. And when that time occurred I was the one that called time and everybody left.

Q Did you in fact call time?

A Yes.

Q Were there customers in the bank, employees in the bank?

A Yes.

Q What did they do during the robbery?

A When I came to the bank, everybody was down on the floor.

Q Did they stay on the floor during the robbery?

A Yes.

Q Did you see anybody looking up and looking around?

A No.

Q What happened after you called time?

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Q Have you been charged for having robbed that truck?

A I don't think so.

Q Are you hopeful that you won't be charged?

A I hope so.

MR. PRAVDA: I have no other questions of this witness.

MR. BUCKWALD: No further questions, your Honor.

BY THE COURT:

Q I don't remember if I asked you yesterday or if you were asked by abybody; when you were in the bank, were you armed?

A Yes.

Q Did I ask you these questions yesterday?

A No, you didn't.

Q Nobody has asked you these questions, did they?

A No.

You asked me at the last trial.

Q Not at this trial?

A No.

Q What kind of gun did you have?

A I had a sawed-off shotgun.

Q Was it loaded?

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A No.

THE COURT: Any other questions?

REDIRECT EXAMINATION

BY MR. BUCHWALD:

Q Did anyone else have any weapons?

A Yes.

Q Who had what?

A Everybody had pistols but myself. I had a shotgun. James Evans and the girl Sandy.

Q What did James Evans and the girl have?

A Nothing. They were the scoopers.

THE COURT: That is another term we learned, that is a scooper.

THE WITNESS: Yes.

THE COURT: And when you go and look at the bank, you case it.

THE WITNESS: Yes.

THE COURT: Were you aware of any of the other guns, do you know of your own knowledge whether they were loaded?

THE WITNESS: No, I don't know whether they were loaded.

THE COURT: You of your own knowledge don't know that?

SOUTHERN DISTRICT ..... PORTERS, U.S. COURTHOUSE

THE WITNESS: No.

THE COURT: All right.

You may step down.

(Witness excused.)

MR. BUCHWALD: Your Hono r, I believe the next witness is downstairs and will take a few minutes to bring up.

THE COURT: All right. We will wait for him.

(Pause.)

THE COURT: We will take a recess, but don't leave the room. If you want to walk around, you can do that. Don't discuss the case. As soon as the witness is available we will continue.

(Recess.)

THE COURT: All right.

(In the courtroom in the presence of the jury.)

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INTERVENING PAGES OF TRANSCRIPT OMITTED

James Evans and myself.

Q Then what happened?

A James Evans and Sandra went over the counter. Myself, Henegan, Boo and Aaron secured the bank.

Q When you say secured the bank, what are you refer- referring to?

A More or less we asked the people for cooperation and told them, you know, we told the people to more or less everyone please cooperate and no one would get hurt. Lay on the floor, and they did so.

Q Were you armed at this time?

A Yes.

Q What did you have?

A I had a 38.

Q Is that the same pistol that you had in the garage where you got the van?

A Right.

Q And it was loaded?

A Yes.

Q Do you recall what the other people had?

A Well, I know Frank Henegan had a shotgun; Boo had a grenade. I'm not sure what kind of pistol Aaron had, I don't know whether that was automatic or not.

Q Do you recall specifically that he had a pistol

SOUTHERN DISTRICT CO... REPORTERS, U.S. COURTHOUSE

also?

A Everyone had a pistol. The only one who didn't have a pistol was Boo and Sandra, the woman.

Q How long were you in the bank?

A A little less than a minute.

Q What if anything did you do after the minute was up?

A After the minute was up, all that we didn't have we left.

Q Was there somebody keeping time?

A Yes. Aaron was by the door, standing over there calling time.

Q Did he say time?

A He called out "time" and everybody said well, this is it, let's get out of here, and we left.

Q Then what did you do?

A We got into the van, drove out, then drove north, got into the two cars and left everything, clothes and all, and we went different ways. Money in one car and the girls in the car with the money, and the guns and us in another car. And we arrived in a destination somewhere in Long Island somewhere, and we split it up, the money.

Q Is it your recollection that you did not go in the same car as the girls?

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that kind of stuff.

Q Do you remember what role was assigned to James Evans?

A Go over the counter and clean out the drawers.

Q Do you know where James Evans lived at that time, approximately?

A No, I didn't even know his name was James Evans at that time.

Q Do you know whether he was out on parole?

A I wasn't too sure of that.

Q Did you think he was on parole?

A Could be.

Q Did you in January know where James Evans lived?

A All I know, he lived in Manhattan somewhere, I don't know just where.

Q If I were to mention the East 96th Street area, would that ring a bell?

A That would, because it was related to me later on.

Q And that is where James Evans lived, approximately?

A I still don't know where. I know from seeing him yesterday that he doesn't live there.

Q I am talking about November, December, around

that time.

A Probably somewhere around there, right.

Q What exactly was your role, Mr. Ruddock, in the bank?

A Basically the same, more or less to secure the bank, that's all.

THE COURT: Would you hold your hand down because the jury has trouble hearing you.

THE WITNESS: Sorry.

Basically to secure the bank, make sure that people cooperate.

Q What was Mr. Williams' role?

A He was to see that more or less that anybody who was coming in, come all the way in.

Q These were the roles that were set out at that meeting at Sandra's apartment?

A Correct.

37 Q Was there any discussion at Sandra's apartment about anybody not being there who would participate in the robbery?

A I don't understand what you mean.

Q Was there talk at the apartment, there is another person who will be with us but he is not here now, at the meeting?

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THE COURT: Are you finished?

MR. PRAVDA: Yes.

THE COURT: Will you come up, please.

(At the side bar.)

THE COURT: Any motions?

MR. PRAVDA: Yes.

One, Judge. I would renew the motion made at the open of yesterday's proceedings with reference to the request for dismissal of the indictment based on the failure to disclose particularly a document that I have introduced as Exhibit B for the defendant as Brady material.

THE COURT: I continue to reserve decision.

MR. PRAVDA: And at the close of the Government's case I would move under Rule 29 for a direction of acquittal on the ground that they failed to prove a prima facie case.

THE COURT: The motion is denied with an exception to the defendant. I presume the motion is made as to all three counts.

MR. PRAVDA: Yes, your Honor.

THE COURT: And is denied as to all three counts, with an exception to the defendant.

MR. PRAVDA: Judge, I understand from Mr. Buchwald that in response to my subpoena a witness has

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robbery.

Q Do you recollect what robbery that was from?

A Yes, sir. He was arrested on February 13 and he had money on him from a robbery which occurred February 11, two days prior to his arrest.

MR. PRAVDA: Thank you.

MR. BUCHWALD: No further questions.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Both sides rest?

MR. PRAVDA: Yes, sir.

MR. BUCHWALD: The Government rests.

THE COURT: Come up, please.

(At the side bar.)

THE COURT: I assume you renew your motions?

MR. PRAVDA: I do, Judge.

THE COURT: And the same disposition. I continue to reserve on the Brady incident, Brady material, and deny with an exception to the defendant as to the three counts in the indictment.

How much time do you need? What did you take last time, twenty minutes a half hour? I don't remember.

MR. PRAVDA: I think I would take 15 to 20

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whatever it is, from the bank.

The cars are left there with Shirley Hall. They get into the van. They all have their changes of clothes. Stitch said he didn't have it underneath, he had another change of clothes which he left in Henegan's car.

Evans' testimony was that his was right underneath so that he could change later. But they have this change of clothes, their disguises. Sandra Becote has the wig.

They go on over to the bank and about a half a block from the bank Sandra Becote and James Evans, I think here again Ruddock's recollection is that it was Boo, not James Evans, who got out and went in first. But I think it is pretty clear that he is just wrong about it. Does that sound like Ruddock is lying when he said Boo?

When Ruddock said gee, I think it was Boo and Sandra Becote who got out, did that jump through your mind, oh, Ruddock is lying? Does it make sense if this is harmonized testimony, that Ruddock would be that wrong?

Does it go through your mind or not, he is just wrong, he doesn't remember that.

So James and Sandra Becote get out, walk into the bank first, pretending they are customers. They go over

SOUTHERN DISTRICT C ...TERS U.S. COURTHOUSE

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Sandra Becote over. You can tell that these two pictures are taken from different angles. This one is taken this way and in this one over here it's taken just the other way. It must be two surveillance cameras, one going in each direction.

So this area over here is really the same corner of the camera, and it does look as if it's Aaron Stewart who helps Sandra over the counter. I think everybody's recollection is Henegan was the timekeeper, except Ruddock, and Ruddock's recollection is that it was Boo who had gone in with Sandra, and his recollection also was that it was Aaron who was the timekeeper. I think he is simply wrong about that.

Henegan himself says it was me, I was the timekeeper in this thing.

As far as the weapons, I think everybody agreed -- well, you can see some of them. I think you can see Ruddock's pistol right there, and Boo, I don't know if you can see the thing he has in his hand, but that must be th e simulated grenade he was talking about.

48 I think some of them said that Evans was the only guy who didn't have a weapon of some kind. I think Evans himself said. That might make some sense. He was talking the day before, there are only a certain number of

SOUTHERN DISTRICT RTERS U.S. COURTHOUSE

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US v Stewart
74 Cr. 498
(Cannella, J.)
9/11/74

els

CHARGE OF THE COURT

THE COURT: Members of the jury, at the outset I want to thank you for the careful attention you paid to this case. It is a serious case both to the Government and to the defendant, as you well realize. I also thank the attorneys because they have been of great assistance to the Court and particularly in the manner in which the issue in this case was focused for your attention so that there could be no question at all about what you are supposed to be trying to decide in this case.

Therefore, I thank Mr. Buchwald and Mr. Pravda for their assistance to the Court. Because of this very fact, it quickly resolves itself into a question of fact, namely, did this defendant participate in this conspiracy and this robbery, because everything else seems to be agreed upon.

Mr. Pravda said so in so many words, namely, that there was this situation up in Bruckner Boulevard; there was this bank robbery, and these events did occur. But his client's position is by virtue of the plea of not guilty that he was not involved in this and, therefore, that is the question of fact which is paramount in this case.

On this question of fact you are the sole and sovereign judges. There is no one who can substitute

els 2

their judgment for yours. You are the sole and sovereign judges of the facts in this case and you are the sole and sovereign judges of the credibility of all the witnesses that have appeared during the course of this trial.

The questions of law you must accept from the Court, even though you may not agree with them. I don't think in this case that proposition is involved because I am sure that the seriousness of this kind of activity by people is something that Congress had a right to pass upon, and this law which they passed is the law with which I don't think you can quarrel. What they said, simply, was that if the funds are from a national bank or if they are insured by the Federal Deposit Insurance Corporation, such a robbery is within the Federal jurisdiction. That is the reason why we are here and that is the reason why we are trying this case.

Just as every other criminal proceeding in our jurisdiction, this one started in the grand jury. This evidence was produced before the grand jury, whose function it was to determine whether there was probability that a crime was committed and that these are defendants who were involved. That was not a trial. They said that in their opinion they were involved, that this crime did occur, and, therefore, they handed down an indictment.

els 3

The indictment is a very simple one. The first one says that there was a conspiracy to violate certain Federal laws and the Federal law invclved was this 2112, involving robberies of banks that have some Federal authority behind it.

The second count involves the actual robbery by intimidation. This is in very broad strokes. And the third count says that if in such a robbery, the Congressional statute says that itself -- I will read it to you, it is very short, and you will see exactly why there is a third count -- the first count is under 2112(a) as far as it applies to this case:

"Whoever by force and violence or by intimidation takes from the person or presence of another any money belonging to or in the care of or custody, control, management, or possession of any bank, commits a crime."

Now, the second part of that same law, which is Subdivision D, is the subject matter of the third count. And that says:

"Whoever in committing that offense," which I just read to you, "assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device shall be guilty of another

cls 4

crime."

Those are the crimes which the grand jury accuses this defendant with, as well as these other defendants. The fact that these other defendants have all pleaded guilty, that doesn't necessarily mean that because of that, this defendant is guilty. There must be proof.

This defendant, when he was charged with this particular crime, came into the court and denied it and, therefore, that puts the burden of proof upon the Government to prove every material fact in this indictment. In effect, what the defendant has said and his lawyer has said, that, I don't dispute any of the material facts at all, as far as this conspiracy and this robbery and this robbery by assault is concerned. What I am disputing is that I was there; that I was a party to it; that I had anything at all to do with it.

And that is the issue that faces you. Now, as a result of his plea of not guilty, we know that what follows then is that since every defendant who is charged with a crime in our jurisdiction is presumed innocent unless and until the Government proves his guilt beyond a reasonable doubt, the burden of proof, therefore, falls to the Government, and the Government his this burden throughout

els 5

the trial, and it never shifts to the defendant.

52 The defendant need not take the stand; he need not produce evidence; he need not get witnesses; he need not cross-examine anyone; he need make no statement. The fact that he does not take the stand may not raise any presumption in your mind or any inference that he is guilty of anything, because when all is said and done, the burden of proof is still on the Government to satisfy you by credible evidence beyond a reasonable doubt of his guilt as to these three charges before you may convict him of any one or more or all of them. So you will keep that in mind.

The tool used in order to prove anything in a lawsuit is called evidence. Evidence has a number of ways of being described. The first I will describe to you is by th e quality of evidence and the causity of evidence. The quality of the evidence means credible evidence. That means believable evidence. The quantity of the evidence, we mean this quantity:

That quantity which is called beyond a reasonable doubt, that is the evidence which is the burden that the Government has in this case, satisfying you beyond a reasonable doubt. There is nothing very mysterious about those words. They are self-explanatory, as a matter of

els 6

fact.

A reasonable doubt means a doubt that is based on reason and must be a substantial, rather than a speculative doubt. It must be sufficient to cause a reasonably prudent person to hesitate to act in more important affairs of his life. And that is the burden that the Government has, and it is no more and no less.

What do we mean by evidence, describing it in another fashion? Evidence is comprised of the testimony of witnesses who come here and under oath tell you what they know. It also includes anything that is brought out on cross-examination and it includes any natural inferences that flow that testimony.

In addition to that, it includes any exhibits that have been produced in the case, and I invite your attention to the photographs and any other exhibits which were introduced into evidence. They all must be considered by you during the course of your deliberations.

The next thing are the stipulations that were entered into between the parties. For example, one of the stipulations that comes to mind is that the parties agree that at this particular point in time, this particular bank up in Bruckner Boulevard was in fact insured by the Federal Deposit Insurance Corporation. And that you must accept

as a fact.

The last thing which is in the nature of evidence are things which the Court takes judicial notice of because they are so easily proven and everybody knows about them that there is no need for proving them. For example, that this bank up on Bruckner Boulevard is within the jurisdiction of this Court, since Westchester County is one of our counties over which we have jurisdiction and there is no need to prove it. And therefore, as a rsult of that, you have the authority to hear this case as well as I have the authority to hear it, because it is within our jurisdiction. And I take judicial notice that the bank is in Westchester County and with in our jurisidction --

MR. BUCHWALD: Your Honor, it's in Bronx County.

THE COURT: Yes, Bronx County. I stand corrected. But anyhow, Bronx County is also within our jurisdiction.

The important thing sometimes in determining whether or not you can come to a proper judgment is to exclude from your discussions anything which is not evidence, and the first thing which I call to your attention is the indictment in this case.

I have given the Clerk of the Court a copy of the indictment, and the Foreman, Mr. Ruiz, will get a copy of it,

els 8

and you will all have the benefit of seeing that. That is not evidence. That is merely the accusation. What you decide the case on is what you hear in the courtroom.

The second thing are the questions which were asked which were not answered. You remmeber, I gave you the example, and I am not going to amplify on it, about the fellow who was asked the question about "When did you stop beating your wife?" The questions are not evidence. It is the answers that are evidence.

Any matters which the Court sustained an objection and directed that it be stricken from the record you must disregard that evidence. That is not evidence either. Any of the comments between the lawyers themselves and the Court which you heard, 99 per cent of them were here at the side bar and you didn't hear them at all, but anything that you heard, that is not evidence either, because we were not sworn, we are not witnesses in this case, and we did not testify. So anything that you heard us say you may not consider as evidence.

How do you evaluate the evidence that you did hear? You are not IBM machines nor any kind of electronic device that you can compute and, therefore, we rely upon what jurors for a long time have relied upon in the past. I will invite some of them to your attention.

els 9

The first of them is the demeanor of the witness as he sat on the stand and answered the questions.

The second is that you use your common sense. You use that same discernment in judgment in this case as you do in important matters in your lives.

The third thing is to determine the interest of the witness.

In the interest of the witness, we incorporate a lot of things in this case. There are a lot of things invovled concerning these witnesses. We know, for example, that seven of the eight persons involved in this case came here and testified, and that they all are about to be sentenced, have been sentenced in our jurisdictions, on other bank robberies, and that they do face judgments from the Court.

We know that if you believe this evidence, they were accomplices, they were together, they were doing a common thing, they were acting in concert, and they were accomplishing a purpose which was illegal. We know that in some of the cases some of the ladies, for example, one of the ladies has baby. Both of them have children, and they want to get back to them. We must consider all these matters in determining the truth or the falsity of their statements.

cls 10

People who are in this particular category are accomplices, and I would charge you as a matter of law that these would be and are accomplices as a matter of law. Their testimony must be looked upon with great care and scrutinized carefully. That does mean that you can convict on their testimony alone, because if you believe their testimony beyond a reasonable doubt, there is no necessity for corroboration of it. But you must believe it beyond a reasonable doubt before you may accept it.

The interest of each witness, of course, the man in the bank that threw the money at the teller and, of course, he had an interest to protect his money; but I don't think there is anybody that disputes what happened with him. I don't think there is any question about his testimony whatsoever.

As I indicated to you at the time that it happened, if we only had that $725 in $5's which he lost, we would not have jurisdiction in this court. But there is an audit in this case and the audit indicates that there was some 8000 or so, or whatever it was, $8400, less $725 that was in the custody of the bank, that was in the possession of the bank, that was in their control, and that was taken.

The pictures are eloquent. There is Evans there scooping it into a pillowcase and they themselves

els 11

admit it, Evans and Sandra, that they did take the money. So that in this particular case the man's money might have been of interest to him, but I don't know what difference that makes as far as the testimony of the customer is concerned.

The interest of the teller, he was scared stiff, and I don't know that anybody denies that. As a matter of fact, I think Mr. Pravda said that element has been proven, we don't dispute that. What we dispute is that he was there.

53

But in determining his case look into the interests of the witnesses who testified and make a determination based upon a consideration of all the factors in the case. If you find that a witness has falsely testified to any material fact, you must disregard that portion of his testimony which you believe to be false, and you may disregard his entire testimony.

Some of the witnesses in the case have convictions. The only purpose that that serves and the only reason that is allowed is for you to consider that in determining his credibility, his believability and in determining his credibility or believability you will consider that factor.

The defendant is one of a number of defendants.

SOUTHERN DISTRICT ITERS, U.S. COURTHOUSE

els 12

Some of them have pleaded guilty, one of them has not pleaded yet, and they all were involved in this same one crime. The guilt or innocence of this defendant on trial, however, and I called this to your attention before, it merits repetition, must be determinined solely upon the evidence which has been adduced in this case. And you consider his culpability on that basis.

I asked a couple of questions here and there from time to time. The fact that I asked the questions doesn't make them any more important than any other questions. You consider all the questions of equal importance, and do not stress anything that the Court asked as being more important than anything else.

As Mr. Pravda indicated to when when he opened up to you, he said there was an identification question here, and of course that is a term of art in the law, actually. He did tell you on summation that what he was really talking about is not the traditional identification case that we have in these kinds of cases where a person catches a glimpse of a man with or without a mask and sees him three seconds, and five years later identifies him as the person who was there. That is the traditional kind of identification question that we have.

Our question here is not that. Our question

els 13

here is not that. Our question here is, are these witnesses telling the truth? Stewart says he was not there, because he pleaded not guilty and that is his position, and they say he was there. So that is the kind of identification we have in this case.

On this particular matter, of course, you will recall that the burden of proof is upon the Government to prove his guilt beyond a reasonable doubt.

The charges are contained in this indictment and I am going to give it to you so you will be able to read it and help you in making your judgment. There are certain terms in there which I will define to you so that you know what they say and how they are used in this particular indictment.

There are three words which are used in all of them: unlawful, knowing, and wilful.

Unlawful means contrary to Federal law, namely 2113, the bank robbery section and conspiracy section.

Knowing means voluntarily and freely. That means to do something voluntarily and freely, not through mistake, inadvertence or by error. And wilfully is really the basis upon which our whole jurisprudence is based. It is because we have willpower and the right to exercise it, to do something or not to do it, that we

els 14

become responsible. And what we mean to do an act wilfully means that you do an act voluntarily and freely, not because of mistake, inadvertence, not because you are doing it in error, but because you are doing it by what the Romans called the mens rea, the evil mind, the bad motive. What they meant in there with this language is to the bad motive, the evil intent to rob the bank of this money. That is what you must find before you can find him guilty of this crime.

There are three charges in this case. The first one is the conspiracy charge, and we will get into that, and I will define some of the terms, because here again as laymen you probably have come across some of these terms. The conspiracy is contained on the first two pages of the indictment, and the first paragraph of it indicates what the conspiracy was.

The second paragraph indicates the means by which the conspiracy was to be accomplished. And the third paragraph is labeled overt acts, and they are four in number and they are necessary in this sense: That the Government must prove at least one of those. It doesn't have to prove all of them, but it must prove at least one of them, and all of you must agree on the one. There is one of them here that is so obvious that I don't know how you

els 15

could disagree, but that is your judgment, not mine. For example, 3:

On or about November 5, 1973, Sandra Becote, the defendant, wore a wig. You remember, she said that on the stand when she was asked. She had a wig. There is only one of those overt acts that need be proven. I will come back to that later.

This first charge is a conspiracy charge. A conspiracy is a combination of two or more persons to accomplish an unlawful purpose. In this particular case we are talking about the bank robbery. The law defines a conspiracy as follows:

If two or more persons conspire either to commit any offense against the United States or to defraud the United States or any agency thereof in any manner or for any purpose and one or more of such persons does an act to effect the object of the conspiracy, each shall then be guilty of a criminal offense. So that essentially is the definition of a conspiracy.

What is the law concerning conspiracy, because there are certain principles of law that surround this concept of a conspiracy, and I did tell you some of them before when the lawyer objected and I took some testimony subject to connection, if you remember. This may sound

SOUTHERN DIS... PORTER U.S. COURTHOUSE

repetitious, and to some degree it is. But this is the law of conspiracy which is involved in this particular indictment.

The defendant has been indicted in Count 1 for the crime of conspiracy to commit an offense against the United States in violation of the Federal statutes. To convict the defendant of this offense the Government must prove beyond a reasonable doubt that there was a conspiracy to commit an offense in violation of Section 2113 of Title 18, which is the robbery section I have been referring to, and that the defendant was knowingly and wilfully a member of the conspiracy, and that during its existence at least one overt act was committed by one or more of its members in furtherance of the objects of the conspiracy.

It is the conspiracy, that is the agreement to commit the offense of bank robbery, which is the crime charged In Count 1. It may be established regardless of whether or not the purposes of the conspiracy were accomplished. Here, of course, the Government contends and the evidence clearly indicates, that the bank robbery took place; they did get the money, and they did divide it. So they did accomplish it.

A conspiracy is a combination of two or more persons to accomplish an unlawful purpose. While it

SOUTHERN DISTRICT ... ORTERS, U.S. COURTHOUSE

els 17

involves an agreement to violate the law it is not necessary that the persons meet together an enter into an express or formal agreement. In this particular case the evidence indicates, and there is no dispute of it by Mr. Pravda in his argument, that there was an agreement, an express agreement, and they divided the job. In determining whether a conspiracy exists, you should consider the acts and declarations of all the alleged paticipants.

In determining whether the defendant was a member of the conspiracy, you should examine and consider all of the evidence in the case. Mere association does not establish a conspiracy nor is a conspiracy without participation sufficient to constitute membership. What is necessary is that the defendant participated with knowledge of at least the purposes of the conspiracy and with an intent to aid in the accomplishment of those unlawful purposes. The defendant cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed and that he was one of the members.

54

To be a member of the conspiracy a defendant need not know all of the other members nor all of the details of the conspiracy, nor the means by which the objects were to be accomplished. Each member of the conspiracy

els 18

might perform distinct and separate acts. It is necessary, however, that the Government prove beyond a reasonable doubt that the defendant was aware of the common purpose: to rob the bank; was a willing participant with the intent to advance that purpose.

The extent of his participation is not determinative of his guilt or innocence. His financial stake, if any, in the venture is the factor to be considered in determining whether a conspiracy existed and whether defendant was a member of it, and, if you recall, they indicated that he was one of the ones that got the principal shares and Shirley Hall was the one that got the $500.

If it is established beyond a reasonable doubt that a conspiracy existed and that the defendant was one of its members, then the acts and declarations of the other members of such conspiracy in or out of the defendant's presence, done in furtherance of the objects of the conspiracy, and during its existence, may be considered as evidence against the defendant.

When a person enters into an agreement for an unlawful purpose, they become agents for one another. One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or the instigators of the conspiracy.

SOUTHERN DISTRICT ... RTERS U.S. COURTHOUSE

els 19

Here, of course, the Government claims that not only was he part of the conspiracy, the second one, but he was even in another one before that. So you will consider that evidence and give it whatever weight you determine you will give to it.

It is not necessary that all the overt acts charged in the indictment be performed. I have already explained that to you. I see no need to go any further into that. As a matter of fact, in that particular regard you will recall I gave you an example when we were talking about this during the trial, that if you go and buy a flashlight in a five and ten-cent store , that is a perfectly legal act. Still and all, if it is to be used in furtherance of the conspiracy, that is sufficient, and a sufficient overt act.

Here, similarly, if this yount lady put on this wig for the purpose of furthering the confusion of the people who were watching and were involved In this bank robbery, that, too, would be sufficient, even though it is not illegal to wear a wig nor to buy one. So that in this first charge, if you find that the Government has proven these three elements which I have discussed with you earlier and if you find that they have established that there was a conspiracy as set forth in Paragraph 1; and

els 20

secondly, that the second paragraph, that the means was used, namely this bank robbery: and further, that there was one overt act upon which all 12 or you agree, then if the Government has proven all these elements of this particular charge, it is your obligation to convict the defendant.

On the other hand, if the Government has failed to prove any one or more or all of these elements, then it is your obligation to acquit the ddfendant.

You remember that the principal element in this as well as the other two charges which follow is whether or not he in fact participated in it. Before you may convict him you must find that he voluntarily participated in it, unlawfully, knowingly and wilfully, as I have defined to you earlier.

What is the second section here, the second count? The second count is the bank robbery. In Count 2 of this indictment the defendant is charged with having violated Section 2113(a). It is very short and I will read it to you.

"Whoever by force and violence and by intimidation takes or attempts to take from the person or presence of another any property or money or anything of value belonging to or in the care, custody, control, management or possession of any bank, is

SOUTHERN DISTRICT ... ORTERS, U.S. COURTHOUSE

els 21

guilty of a crime."

You therefore follow each element in Count 2 and you will have it before you when you go into the jury room. The first thing is that it happened on November 15, 1973. All the evidence in this case, all agree that it was on November 15, 1973. So there couldn't seem to be much dispute about that. And that it happened in the Southern District of New York, and I have already indicated to you that I have taken judicial notice that the Bronx and Bruckner Boulevard where this is in the Southern District of New York.

It continues on, naming all the defendants as well as this one, and saying that they acted unlawfully, wilfully and knowingly. Here again, I have defined these terms to you and you are fully aware of what they mean.

Then it continues on, by force and violence and intimidation. Those have the ordinary English meaning. There is nothing mysterious about what that means. The concept to take by intimidation means wilfully to take or attempt to take by putting in fear of bodily harm. Such fear must arise from the wilfull conduct of the accused persons, rather than from some temperamental timidity of the victim.

However, the fear of the victim need not be so

els 22

great as to result in terror, panic or hysteria. The taking or attempting to take by intimidation must be established by proof of one or more acts or statements of the defendants, including this defendant, which were done or made in such a manner or under such circumstances as would produce in the ordinary person fear of bodily harm.

However, actual fear need not be proved; fear may be proved in the statements made and the acts done by the accused, as well as the victims, and from all the surrounding circumstances shown by the evidence in the case. I think if you will take a look at those photographs, you can almost see it yourself right before your eyes. You have heard the testimony of the people involved, the teller and the other man, the merchant who was making the deposit, and you can make a judgment as to whether or not that element has been satisfied.

It says here that they took $8500, in this indictment. The Government doesn't have to prove that exact amount. The amount involved here was seven thousand-odd dollars and that would satisfy this particular part of the indictment.

It says it was taken from the custody, control, and so forth, of the bank, and you already know that the teller testified that he made an audit and there was money

els 23

missing, and you see Evans in the picture and his own testimony and everything else, taking the money from the drawer. So that would satisfy that element if you believe it. So that as far as Count 2 is concerned, if you find the Government has proven these elements by credible evidence beyond a reasonable doubt you then must convict the defendant.

On the other hand, if you find that they have not proven every element beyond a reasonable doubt, then it is your obligation to acquit the defendant. You must acquit the defendant if that is the case.

Here again the question is, was he participant, because it seems to me that other than factor in the case, the other factors have been more or less conceded, you know, as a jury must find them in any event, in order to convict him. In other words, even if the defendant admits his guilt, many times we as judges refuse to take a plea because we find that an element is missing. So that it is important for you to make a judgment on these and go through each element on the count and make sure it's been satisfied regardless of what the defendant says, whether it's been proven or not.

Now we come down to the last part of the case, and that is the third count. And in this count the

els 24

defendant is charged with violation of Subdivision D. That says it is a crime and it is a separate crime to commit the offense which we have just been talking about if in the commission of that offense the defendant assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device.

55 If we go through that indictment these are the elements you must find before you convict him on these.

First it happened on or about the 15th day of November, 1973, and we have already discussed that.

Secondly, that it happened in the Southern District, and here again I have taken judicial notice of it. And it talks about the defendant acting unlawfully, wilfully and knowingly, and I have defined that term for you, in committing and attempting to commit the offense charged in Count 2 which we have just discussed a minute ago, did assault persons and did put in jeopardy the lives of persons by the use of dangerous weapons and devices, and that is the last element in the case.

As far as that is concerned, in addition to finding beyond a reasonable doubt that the defendant was a participant in it, in this particular robbery, you must find that he or somebody else who was with him who he was acting in concert with or with whom he was in a conspiracy

els 25

conducted himself in such a way as to assault the customers and the tellers in the bank.

The concept of assault is a simple one. An assault is, if you say or do something in such a way that you put someone who is in your presence in the present fear of bodily harm, and they feel reasonably that you have the power to commit bodily harm on them. They don't have to touch you; they don't have to hit you; they don't have to shoot you. But if they put you either by their acts or words in such a frame of mind that you think you are going to suffer bodily harm, you have been assaulted.

In addition to that, not only is there the element of assault in this case but it also continues on and says, and did put in jeopardy the lives of persons by the use of dangerous weapons. You heard what they were.

The fellow with the shotgun, he couldn't have done anything but hit you on the head with it, I suppose. He didn't have any bullets in it. But the other fellows did, and who knows what happens during the course of this kind of an episode. As a reasonably prudent person, do you feel that those persons in the bank felt that they were in jeopardy -- let's put it this way, that they were put in jeopardy by the use of dangerous weapons? You will make a determination as to that and come up with an answer.

els 26

If you find that the Government has proven each one of these elements which I have just discussed with you beyond a reasonable doubt by credible evidence, then it is your obligation to convict the defendant. On the other hand, if you find that the Government has failed to prove any one or more or all of these elements, then it is your obligation to acquit the defendant.

That ends the discussion as far as the particular charges are concerned. As I indicated to you, you will make a judgment based upon a discussion of the evidence and all the evidence in the case, not just parts of it. You discuss all the evidence in the case. Actually, when you get down to it, as the parties themselves have indicated, and as the defendant himself particular indicates, the nub of the case is, was he there, did he participate in it. So you will have to examine all the evidence in the case.

What interest did these defendants have who testified against him? Is it possible that the whole seven of them got together against him and framed him? They didn't know him beforehand. They have no quarrel with him now. As a matter of fact, one girl made a statement which nobody picked up, which sort of sounded strange to me at the time, I think it is in the evidence, I am sure it is, she said something about, well, I still

consider him a friend, or some such words, I don't know. Don't go by my recollection of the testimony because it doesn't bind you in any way, and it is only my recollection and you can forget about it and use your own recollection.

So considering all the aspects of this, what motive would these people have, why would they bring him particularly in? Why wouldn't they select somebody else at random?

The suggestion is made that the reason they are doing it is that the more they tell the Government and the more they feel the Government wants, the more consideration they are going to get on sentence. In effect, that is part of the argument, as I understand it. I don't know what motivates these people any more than you do. It will be your considered judgment to come to a conclusion on that. So I would suggest to you that you adopt what lawyers say to you, think about this case seriously, in other words, don't go into the jury room now and immediately say, oh, I think this or I think that. Don't make up your mind right away.

Just think about it and start to discuss the case amongst yourselves. I once had a jury that was out for about eight hours and I couldn't understand what was happening in there. I asked the bailiff to go in and

els 28

say what's the trouble. And he said, Judge, you have been telling us right along, don't discuss the case, and we have just sat here.

That is all over now. I hope you don't do that. Discuss the case and come up with a verdict that is in accordance with your discussion. In other words, you are going to have this thing that you did for a long time and you are probably going to remember it for a long time because this doesn't happen very frequently. But don't forget, they are serious rights here to be protected. They are the rights of people to go into a bank and not be subjected to this conduct, and also the rights of this defendant who faces a very serious punishment if he is found guilty of this crime. So do what your conscience dictates.

Don't be swayed by sympathy or bias, however, because that plays no part and should play no part in your judgment. Decide the case without fear or favor. As far as punishment is concerned, although I mentioned that because it is a serious matter to the defendant, it is no consideration for you whatsoever because just reflect a minute and think:

What possible help is it to know what the punishment is as far as the facts are concerned? It can't change the facts at all. The facts are there. They

els 29

happened. So punishment is none of your business to start with because it is the province of the Court to do that and it is not your province. And in the second place, it absolutely has no relevance at all to your job, namely, to find where the truth lies in this case.

The exhibits in the case are available to you. I am sure the parties will allow me to send them in whenever you want them. I will do that through the clerk of the Court, Mr. Beneducci.

If there is any point in time where you come to a situation where you say, well, I remember so-and-so said this and somebody says no, so-and-so said that, we have very competent reporters here, and they take that all down. So if you get to a point where you have a dispute like that, through your foreman, Mr. Ruiz, you send a note signed and sealed which you will give to the marshal, stating what part of the testimony you want -- whether it is on cross or direct or any other, and we will have the reporter read that to you.

Any one of you may have a question, but they are all channeled through the foreman. He will seal it and put it in an envelope and give it to the marshal.

Mr. Ruiz, the jury must be unanimous on this. All must agree. Consider each count separately and come to

els 30

a separate judgment on each count. When you return here to the courtroom you will have the indictment, and the clerk will ask you have you arrived at a verdict on the first count, the conspiracy count, and you will say yes, we have, or whatever the answer is; and he will ask you what is the verdict, and you will report it. The verdict can be only one of two, either guilty or not guilty.

The same thing applies to Count 2 and the same thing applies to Count 3.

I have one last discussion with the lawyers before you get the case and if you will excuse me, I will do that now.

(At the side bar.)

THE COURT: Any exceptions, Mr. Pravda?

56 MR. PRAVDA: Two thing, Judge.

One which is just housekeeping. I thought, I don't know if you want to, to instruct them that they can't find guilt on Count 3 unless they have found on the other counts.

THE COURT: Yes, I went right by it without looking at my other notes.

MR. PRAVDA: And the other was you indicated that seven of the eight persons involved came here to testify. That might imply at least in the jury's mind,

els 31

make them believe that you are taking one position or the other with regard to the one part of the defense theory that there might not have been eight people, only seven.

THE COURT: Exception noted.

MR. PRAVDA: You noted at one point in discussing a plea, that the Judge can refuse to accept the plea if a point wasn't satisfied. I think that should made clear to the jurors here that that hasn't happened here; that in fact he tried to plead guilty.

THE COURT: I don't think that happened here. I deny that and note your exception.

Any exceptions?

MR. BUCHWALD: No exceptions.

(End of side bar.)

THE COURT: I have been asked to call one thing to your attention. I think I did call it to you, and I think if you just think about it, I don't think you can come to any other conclusion. You cannot convict on Count 3 unless you convict on Count 2, because the very wording of Count 3 is that Count 2 has been accomplished and assault was used to accomplish it. So that you will see that and I tell you now that if you find that the defendant is not guilty on Count 2, that is the end of your discussions as far as that is concerned.

els 32

But if you find him guilty, then you go on to Count 3 and determine whether he is also guilty of that count.

I want to thank the alternate jurors from Westchester -- I think that is what threw me off when I was talking about the bank being in Westchester -- I thank both of you for serving and I appreciate the service to the Court.

You are excused with the thanks of the Court. If you go down to Room 109, the jury clerk will be there and tell you what to do further. That is Mr. Theodore Stern and Arlene Shires.

(The two alternate jurors were discharged and left the courtroom.)

(At 4.20 p.m. a marshal was duly sworn.)

(At 4.21 the jury retired to deliberate.)

(Recess.)

MR. BUCHWALD: May the record reflect that at the conclusion of the proceedings on Monday, September 9 I provided to Mr. Pravda the following 3500 material relative to Mr. Ruddock:

Items 3509-A, transcript of Mr. Ruddock's appearance between Judge Cannella on June 4, 1974, consisting of four pages;

els 33

Item 3509-B, a transcript of Ruddock's appearance before Judge Cannella on June 7, 1974, consisting of six pages;

Item 3509-C, a letter dated May 2, 1974 from Assistant United States Attorney Ethan Levin-Epstein of the Eastern District of New York to Joanna Seybert, Esq., Mr. Ruddock's Legal Aid attorney in the Eastern District concerning Robert Ruddock, consisting of two pages;

Item 3509-D, an FBI report dated January 24, 1974, by Agent Ahlerich of January 17, 1974, telephone interview of Ruddock:

Item 3509-E, an FBI report dated January 17, 1974 by Agent Walker and DiLauro, of a January 15, 1974 interview of Ruddock, consisting of two pages; and

Item 3509-F, Robert Ruddock's New York City Police Department rap sheet prepared July 15, 1974 consisting of two pages.

May the record further reflect that after the charge to the jury and after the jury commenced its deliberations this afternoon Mr. Pravda has returned to me all 3500 material given to him in connection with the case.

MR. PRAVDA: In connection with all witnesses with the exception of Item 3509-E, which has been intro-

els 34

duced in evidence in the case as Defendant's Exhibit B and which is in a court folder with the exhibit.

(Recess.)

(At 5.30 p.m. a note was received from the jury.)

(In the courtroom in the absence of the jury.)

THE COURT: I have a note here which concerns the fact that a woman juror has her car in a garage. I assume I can get her to give the stuff to the marshal and let him go over and get the car out because it closes at 6 o'clock, apparently.

MR. PRAVDA: Fine with me.

THE COURT: Or maybe we can even -- what does she have here -- Leonard's Garage.

MR. PRAVDA: She must have a claim stub.

THE COURT: Maybe we ought to have her go up and get the car and park it in the cellar here. In any event, can we work out some deal?

MR. PRAVDA: I don't care if the marshal gets the car or a marshal accompanies her and she gets the car. But I wouldn't want her to go alone.

THE COURT: Get the marshal in here. She won't go alone.

els 35

(The marshal entered the courtroom.)

(Discussion off the record.)

THE COURT: Bring in the jury. I intend to send them out at 6 o'clock anyhow. We can go out at ten to six for dinner. Then the marshal can take the car out and bring her back to the restaurant. We might as well bring them in and we will tell them what we are going to do.

(The jury entered the courtroom.)

THE COURT: Mrs. Schwartz, what we are going to do is suspend about a quarter to six.

JUROR SCHWARTZ: Will I get there? It depends on the elevators. I just don't want to get locked out.

THE COURT: The marshal will be with you, we will put it in the basement of the building.

JUROR SCHWARTZ: Somebody can get the car, I don't care. I will give you the money.

THE COURT: We can't involve the Government in that kind of a deal if something happens. You are going to go out to supper about a quarter to six anyhow. At that time one of the marshals will be with you. You will get the car, put it in the garage and go with the marshal. At any time that you are separated from one another, don't indulge in any discussion until the other comes back.

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

els 36

If you are not all together, don't discuss the case.

JUROR SCHWARTZ: Can we call home that we will be late?

THE COURT: There is no objection to that, is there?

MR. PRAVDA: No objection, your Honor. I was going to suggest it.

(Recess.)

(Court Exhibit 12 marked.)

xx (At 9.10 p.m. a note was received.)

(In the courtroom in the absence of the jury.)

THE COURT: There are two things they would like to know:

Evans share of the money, which I believe was equal shares, as I understand it, about a thousand dollars or eleven hundred dollars.

MR. PRAVDA: That is my recollection of the cumulative testimony. I don't remember what his precise testimony was on the subject.

THE COURT: They didn't ask for his testimony. They just said Evans' share of the money. I think it is clear all throughout that except for the $500 she got, the rest of them got equal shares.

els 37

MR. PRAVDA: That is the testimony, I think.

THE COURT: That is as I remember it. They also want to have the dates of the arrests after the November 15th robbery.

MR. PRAVDA: Would it be possible, I don't know if it is appropriate, to inquire about what they mean by Evans' share; his testimony as to his share or the cumulative testimony as to his share?

THE COURT: We will find out. It is an ambiguous question. I don't know from this.

MR. PRAVDA: As to the arrest dates, I charted that in my trial notes.

Judge, I have one for Williams; his first arrest, November 19, 1973.

57 His second arrest, February 13, 1974.

Then for Reginald Stich, June 3, 1974.

Then for Frank Henegan, January, 1974; the exact date did not come out.

Then for Ruddock, his arrest date did not come out, but this first interrogation date by the FBI was January, 1974.

Then Shirley Hall, May, 1974.

Sandra Becote, April, 1974.

James Evans, May 7, 1974.

And Aaron Stewart, 1974.

THE COURT: Does that coincide with yours?

MR. BUCHWALD: The only addition, Agent Ahlerich I think indicated that Shirley Hall was May '74. Shirley Hall indicated that it was May 21, 1974.

MR. PRAVDA: I believe that is correct. Her own testimony stated the 21st. The agent's testimony said May.

THE COURT: We'll make it May 21, then, but her testimony would be more precise. If the jury says we have to have the testimony, we'll have to have the reporter go down and find it. And if they say they just want to know what the consensus is, it is the same as all the others, roughly about $1100, as I recall. Between a thousand and thirteen hundred, right?

MR. PRAVDA: Yes.

THE COURT: Bring them in and we will see whether they actually want Evans or what.

(The jury entered the courtroom.)

THE COURT: I have a communication from the jury, the first portion of it reads:

Evans' share of the money. It is agreed by the lawyers that the testimony, the synopsis of all the witnesses is that the one girl got 500 and that the rest

SOUTHERN DISTRICT ... RTERS, U.S. COURTHOUSE

of them divided the money equally, which is roughly between $1000 and $1300. The exact figure was not reached, but it was around that figure.

Is that what you wanted to know?

JUROR NO. 4: No, our question was specifically what did Mr. Evans say his share was.

THE COURT: Then we will have to send the reporter down, because that took a day and those notes are downstairs and they will have to be looked up. We will get that for you.

As far as the rest of the question is concerned, Williams was arrested twice:

November 19, 1973, and February 13, 1974.

Stitch was arrested on June 3, 1974.

Henegan was arrested in January, 1974, the specific date was not made known. There is no date on Ruddock's arrest that is in the evidence. He was interrogated in January of '74.

Miss Hall was arrested on May 21, 1974.

Miss Becote was arrested in April, 1974.

Evans was arrested on May 7, 1974; and Stewart was arrested on May 10, 1974.

We will get the rest of the request as soon as we are able to get it.

cls 40

(Pause.)

(Record read.)

THE COURT: You may return to deliberate.

(Court's Exhibit 13 marked.)

xx THE FOREMAN: May I have the paper about the day of the arrest of the people?

THE COURT: I think you can read my handwriting. Is there any objection to them taking the paper?

MR. PRAVDA: No, your Honor.

MR BUCHWALD: None.

THE COURT: Mark it a Court exhibit. Show it to the foreman so he can ask if the jury can read it.

Is it all right?

THE FOREMAN: Yes.

(Court Exhibit 14 marked.)

xx THE COURT: There being no objection it is a Court exhibit and the jury may see it.

(The jury retired to further deliberate.)

(Recess.)

(9.55 p.m. - in the courtroom in the absence of the jury.)

THE COURT: I had in mind of calling in the jury and asking them if they could conclude their deliberations tonight or whether they feel they could just as well

go home and come back tomorrow and finish their deliberations tomorrow.

MR. PRAVDA: That's all right, your Honor.

MR. BUCHWALD: No objection.

THE COURT: All right.

Bring in the jury.

(The jury entered the courtroom.)

THE COURT: The reason I called you out was, it is getting to be 10 o'clock and I want to find out what your preference is, whether you would want to continue to deliberate at this time or whether you prefer to go home at this time and come back tomorrow.

Those who want to remain here and conclude the case, would you raise your hand; and the others, and I will take a count of the ones that would rather go home now and come back tomorrow. Just think about it a little while and let me know.

By the way, Mr. Foreman, there are three charges here. Have you come to any conclusion on any one of them, or have you --

THE FOREMAN: Two.

THE COURT: You have come to a conclusion on two of them?

THE FOREMAN: No.

els 42

THE COURT: That is as much as I want to know, whether you have agreed on any one of them, and you say no. Think about it now and the first inquiry I want to make is those who want to remain here and see if you can arrive at a verdict tonight by continuing on.

Will you please raise your hand?

(No response.)

THE COURT: All right. Nobody raised their hand. Then I conclude that all of you would rather go home and sleep on this tonight and come back tomorrow.

All right. Remember that this is very important, since we part company, do not talk to anybody about this case. Do not discuss it with anybody, your husband, your wife or whatsoever, a neighbor or anybody. Don't forget that these lawyers have requested that you give them your verdict and nobody else's and they are entitled to that. So make sure you don't discuss the case with anybody else. And then return back here tomorrow morning at 10 o'clock and go into the jury room where you have been meeting every day.

I want to make sure that everybody gets to the subway safely. I know Mrs. Schwartz has a car, but do you go in the direction of anybody else that you can drive over?

els 43

JUROR NO. 10: I would be delighted to. I go with the West Side Highway.

THE COURT: Suppose you take Mrs. Martinez and you can go and leave now and we will see what we can do with the other people.

Who takes the east side subway? You two gentlemen esort those two ladies.

Who isn't escorted?

THE FOREMAN: I go to the west side.

JUROR NO. 2: I go up in that direction.

JUROR NO. 7: I take the Lexington.

THE COURT: All right. Make sure the ladies don't go home alone.

THE FOREMAN: I will take the ladies with me. I can drop them off on the west side and 96th Street.

THE COURT: The point is, I don't want any women to go home alone. You figure out so that there is at least man with you until you get to the public transportation.

You are excused now. Don't forget, don't talk about the case, even going up in the car or in the subway. There is a baseball game that went 17 innings. The Or[illegible] won 5 to 2. So talk about baseball.

(Time noted: 10. p.m.)
(Adjourned to September 12, 1974.)

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els 44

UNITED STATES OF AMERICA

vs. 74 Cr. 498

AARON L. STEWART.

New York, September 12, 1974;
10.00 o'clock a. m.

- -

(At 11.15 a.m. a note was received from the jury.)

(In the courtroom in the absence of the jury.)

THE COURT: I have got a note from the jury which says at this point we have reached an impasse on all three counts. We await further instructions.

What I intend to do is read what is described as an Allen charge. Before that I am going to ask them whether or not there is any question of law that they want to be further explained to them or any evidence that they want to hear, because I don't see anything else to do, unless you have some suggestion.

MR. PRAVDA: Your Honor, may I inquire, when you say Allen charge, you mean the modified form that you gave in the last trial, or the traditional Allen charge?

THE COURT: I will show it to you. There is

cls 45

a modified one in McDevitt, I believe. You can take a look at that before they come in.

MR. PRAVDA: I would like to.

In answer to your suggestion, I don't have any.

THE COURT: We have three of them here. One is quite a lengthy one. One is a shortened one. And the other is about a medium size one. I'd be inclined to give the one in Laboy, because that has been approved by the Second Circuit, as you see by the notations I have alongside of it, and the cases.

(Pause.)

MR. PRAVDA: Judge, I would object, I believe, to the fourth, fifth and sixth sentences, which sets forth one, if a majority favors conviction, that the minority has a duty to hear their views on it; and then the converse, if the majority favors acquittal, then the minority has the duty. And if the minority is not impressed with their views, should also consider the views of the majority. I think even without those sentences it still sets for the same principle, to try harder and to weigh carefully the arguments of the jurors on the other side.

MR. BUCHWALD: Your Honor, I think the charge as it appears would be proper, and particularly I think that those sentences which Mr. Pravda would seek to delete

cls 46

are particularly appropriate here, where Mr. Pravda urged in his summation the contrary, and in fact urged people to hold out, if you have a view, stick to it, even if the other eleven people are there. I think it is important, that people hold --

THE COURT: Since it gives both sides of the point and doesn't stress one or the other, I am going to charge as it is there, with an exception to the defendant.

MR. PRAVDA: Thank you, your Honor.

(The jury entered the courtroom.)

THE COURT: I want to compliment you on the seriousness with which you are doing your task. It is refreshing to know that people just don't walk in and walk out of a jury room to decide the fates of people. On the other hand, I want to indicate to you that this is not an unusual situation in a jury. I am reminded that your task is very much like a surgeon who is confronted with, say, a mass in the abdomen of a patient, and he has to find out whether or not that is a real serious thing like a cancer, or that it is benign; and simply removing it will put that patient back in good health. So he opens up the person. He doesn't want to find cancer; he couldn't be more happy to find it is benign. But if he finds it is, there is nothing he can do about it. He has to report.

els 47

You are in the same situation. Nobody likes to find anybody guilty, no question about it. And you may not find him guilty unless it is in accordance with your conscience and according to the law as given to you by the Court. But I will indicate to you in this area what the law is, and after that I will have a little further discussion with you.

In a large portion of cases, absolute certainty cannot be expected. Although the verdict must be the verdict of each individual juror and not mere acquiescence in the conclusion of others, yet you should examine the question submitted with proper regard and deference for the opinion of each other, and you should listen to another juror's opinion with a disposition to be convinced. It is your duty to decide the case if you can conscientiously do so.

If a much larger number of jurors favor conviction, a dissenting juror should consider the reasonableness of his doubt when it makes no impression upon the minds of the other jurors equally intelligent and impartial and who have heard the same evidence. If, on the other hand, the majority favors acquittal, the minority should consider and ask themselves whether they might not reasonably doubt the correctness of their judgment.

els 48

Likewise, the jurors in a minority favoring a finding of either party should ask themselves whether there might not be a reasonable doubt in the correctness of their judgment when it makes no impression on the minds of the jurors, equally intelligent and impartial as they are, who have heard the same evidence.

If you should fail to agree on a verdict, the case must be retried. As a matter of fact, you know, and it has no part in this case whatsoever, but you do know that this case was tried once before. So in effect it will have to be tried a third time, because the case just doesn't disappear. Someone has to make a judgment in this case so that this thing can be resolved. Both parties are asking you to do that.

Any future jury must be selected just the same way as you have been selected, from the same source of people as you have been chosen, and there is no reason to believe that the case would ever be submitted to 12 men or women more competent than you to decide it, or that the case may be tried any better or more exhaustively.

Every witness was called who had anything to do with it. So that there couldn't be further witnesses as far as that is concerned, in the case. I suggest this to you:

els 49

If there is some area of the law or some of the facts which you think might assist you, I would be glad to go into them.

Is there any particular area of the law that you would like a further exposition of?

JUROR NO. 9: Your Honor, we have one thing we are discussing. On whether or not a person outside the bank or person inside the bank would be considered different or are they all considered the same?

THE COURT: They are absolutely the same. This is a concept called aiding and abetting and I will read you the law on that as made by Congress and is the law.

It doesn't make any difference whether you are inside the bank or outside the bank. If you recall my remarks to you when I was talking about this part of the case, I said these people are responsible for each other when they are acting in conspiracy or acting in concert to help one another. It doesn't make any difference whether you are inside the bank or outside the bank. Whoever aids, abets, counsels, commands, induces, or procures the commission of a crime is punishable as a principal.

In order to aid and abet the commission of a crime, the person must associate himself with the criminal

els 50

venture, participate in it and try to make it succeed, and that doesn't make any difference whether he is inside the bank or outside the bank.

Is there any other question of law you would like further expounded?

All right. Then you may retire and deliberate.

(The jury retired to resume deliberations.)

(Court Exhibit 15 marked.)

xx MR. PRAVDA: Your Honor, I have exceptions to the charge you gave. The defendant would except first to the annecdote regarding the surgeon and the conclusion that there are difficult duties that they have to undertake.

Second, I would except to the exposition on the law of aiding and abetting which seems to be in response to a question that relates only to Williams, who is of course not a defendant in this case, as to whether he would be equally guilty if he were outside the bank or inside.

THE COURT: Isn't it a fact, though, that it is a proper exposition of the law, if he aids or abets it doesn't make any difference whether he was outside or inside?

MR. PRAVDA: Absolutely.

THE COURT: The jurors asked that to be

els 51

explained.

MR. PRAVDA: If I read correctly, your Honor omitted the last paragraph of the Allen charge which you had given us to read before you gave the charge.

THE COURT: What is the last paragraph?

59 MR. PRAVDA: Which was to the effect that they could still nevertheless come back deadlocked, you didn't mandate their reaching a verdict, if they were still in good faith deadlocked?

THE COURT: Where do you see that?

The sentence that is in here says:

"You may now retire and reconsider the evidence in the light of the Court's instructions."

MR. PRAVDA: If I could take a quick look at that.

(Pause.)

THE COURT: My intention was and I think I fulfilled it, to read everything but that last paragraph.

Read the last paragraph to him, maybe he heard something I didn't hear.

MR. PRAVDA: I think in fact as I read it now that you did state it.

I withdraw that exception.

THE COURT: All right.

els 52

(Recess.)

(A note was received from the jury.)

THE COURT: The jury wants to hear the testimony of Williams. So we will bring them in and let them hear it.

MR. PRAVDA: Judge, are we reading the direct and the cross?

THE COURT: All it says is, can we have the testimony of Mr. Williams read to the jury.

MR. PRAVDA: Would your Honor propose to read both?

THE COURT: I only propose to read what they ask for. As soon as they tell me to stop, I will stop. If they don't tell me to stop, I will read the whole thing.

(The jury entered the courtroom.)

THE COURT: I have a note from the jury which reads, your Honor, can we have the testimony of Mr. Williams read to the jury.

The court reporter has found the testimony and is prepared to read it now, and is directed to do so.

(Record read.)

THE COURT: I will like to make one remark before you leave.

If you recall just prior to this when you came

in and you said you couldn't agree, in effect, I indicated to you certain principles and the fact that you should discuss the case amongst yourselves and make certain observations amongst yourselves.

During the course of those discussions, on reflection, it seems to me I made an example which is entirely not within the scope of the facts in this case at all; and, as a matter of fact, I think it is an unfair example. And therefore, I tell you now to disregard the example that I gave you, and that is example is of no value to you whatsoever in arriving at a verdict. You are to forget all about it.

However, I would close with the remark that in the last analysis what you must do here, regardless of how you arrive at it, is to arrive at a verdict which is in accordance with your conscience, because if it is not in accordance with your conscience, you would only be stultifying your oath as a juror.

So do the right thing, the thing you think is right in your conscience, and once again disregard the example I gave you.

You may retire and deliberate.

(The jury retired to resume deliberations.)

xx (Court Exhibit 16 marked.)

els 54

(Recess.)

(At 5.25 p.m. a note was received.)

(In the courtroom in the absence of the jury.)

THE COURT: The jury has reached a verdict and we are going to call them in.

(The jury entered the courtroom.)

THE COURT: Will the jury please answer as your name is called.

(Roll call - all present.)

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: Yes.

THE COURT: How do you find the defendant Stewart on Count 1?

THE FOREMAN: Guilty.

THE CLERK: On Count 2?

THE FOREMAN: Guilty.

THE CLERK: On Count 3?

THE FOREMAN: Guilty.

THE COURT: Listen to your verdict as it has been announced by your foreman.

Do you find the defendant Aaron Stewart guilty on Counts 1, 2, and 3? If that is your verdict, please

els 55

answer yes. If that is not, answer no.

(Each juror, upon being asked, "Is that your verdict?" responded in the affirmative.)

THE CLERK: The jury is polled, your Honor.

THE COURT: The clerk is directed to enter the verdict into the record as to each of the three counts, guilty.

This is my 26th year as a judge and I have never commented on a jury's verdict yet because I feel when the jury acts according to their conscience, there is nobody who can quarrel with them. However, I do thank you for your attendance in court and for the careful attention you have paid to this case and the deliberations that you have had during the course of this trial.

You are excused with the thanks of the Court.

(The jury was discharged and left the courtroom.)

THE COURT: Mr. Pravda, do you want to be heard on the motions now or at the time of sentence?

MR. PRAVDA: Your Honor, at this time I would only wish to renew the motion with regard to the failure to turn over certain Brady material. As to other motions I would wish to have my time enlarged until the time of sentencing.

els 56

THE COURT: Fine. We will do that. As far as your motion on the Brady material is concerned I direct both you and the United States Attorney to submit any memorandum of law which you desire to do in that particular matter. I continue to reserve decision on it.

Investigation and -- I promised him that if he did get convicted I was going to give him some time to take care of his wife. How is she coming along, by the way?

THE DEFENDANT: She is still out of work.

THE COURT: All right. Suppose I put it over for two months, then. Do you think that will give you some time to get organized?

THE DEFENDANT: Yes.

THE COURT: All right. Give me a date two months from today.

MR. BUCHWALD: Your Honor, I would wish to indicate that the Government does oppose that lengthy period of time.

THE COURT: I know you do, but the point was that it was partly through my own feeling that he should go to trial at this time. That was predicated upon a thought on my part. It wasn't even asked for by him; that would give him sufficient time after the trial is

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FOLEY SQUARE NEW YORK N.Y. CO 7-4580

els 57

over.

MR. BUCHWALD: Your Honor, may I ask for a protective order to the following extent, that Mr. Stewart be directed not to communicate with anyone in the Federal House of Detention?

THE COURT: Yes, I think that is justified in this case.

Do you understand that, Mr. Stewart?

THE DEFENDANT: Yes.

THE COURT: That means directly or indirectly or otherwise. If you violate that, you have the possibility of waiting in jail until the time of sentence. Don't embarrass me. I went overboard on letting you out now, because usually, and your lawyer will tell you, the Government asks for a remand after a guilty verdict, and sometimes the judges grant it, especially after a bank robbery case.

MR. PRAVDA: Your Honor, we do appreciate it.

THE COURT: I am sure you do, otherwise I wouldn't take a chance with him. That means indirectly or directly. In other words, don't get somebody else to do it. Stay away, because you can only hurt yourself, you can't help yourself.

MR. BUCHWALD: We would further ask, your Honor,

that Mr. Stewart be directed not to communicate with any of the named defendants in this case, wherever they are.

THE COURT: That includes them, except if a lawyer is desirous of getting information on behalf of his client, of course there is no bar there. He can do whatever he wants. But there are to be no threats, no intimidation or no harassment of these witnesses.

We will put it on for November 7, 1974, at 10 o'clock. Present bail is continued. That will be in Courtroom 35.

THE CLERK: The courtroom is under repair and we may have to move.

THE COURT: Suppose you call Mr. Kaplan the Friday before, and you can advise your client.

UNITED STATES OF AMERICA

vs. 74 Crim. 498

AARON L. STEWART,

Defendant.

Before:

HON. JOHN M. CANNELLA,
District Judge.

New York, November 7, 1974;
10.00 o'clock a. m.
(Room 506)

- -

For the Government: RICHARD J. HOSKINS, Esq.

For the Defendant: DAVID A. PRAVDA, Esq.

THE CLERK For sentence, United States of America versus Aaron L. Stewart.

MR. HOSKINS: Government is ready.

MR. PRAVDA: Defendant is ready.

THE COURT: Since I tried the case I know that you are Aaron Stewart, are you not?

THE DEFENDANT: Yes.

THE COURT: Are you ready for sentence?

THE DEFENDANT: Yes.

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THE COURT: Before we proceed there are a number of loose ends here, Mr. Pravda. I don't know whether you reserved your motions for this time. I believe you did, and, therefore, I would suggest that you make your motions, which are usually made at the end of the entire case, at this time.

MR. PRAVDA: I would move to set aside the verdict, your Honor, on the ground that it is contrary to law.

I would also move, your Honor, for a new trial upon the --

THE COURT: Let's take one motion at a time, and the first motion is --

MR. PRAVDA: I move to set aside the verdict on the ground that it is contrary to law.

THE COURT: That is denied with an exception to the defendant as to each count.

Now, continue on.

MR. PRAVDA: I would further move, Judge, that in light of the fact that there has since the time of the trial been brought to my attention and to your Honor's attention by Mr. Buchwald, for which he is to be commended, the fact that it is now possible that David Williams perjured himself in another Federal trial involv-

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involving a bank robbery indictment which may or may Not taint his testimony at the instant trial, that the verdict be set aside. He was one of the principal defendants in this action against the defendant.

THE COURT: I have given that serious consideration and I also feel that the United States Attorney is to be commended, but not particularly in any laudatory way, because it is his obligation to have done that. He did nothing more than he was supposed to do. It is like thanking a jury for doing its duty. A lot of people in our court don't think we should thank a jury because they are here to be jurors.

Mr. Buchwald represents the prosecution, and I was here in 1940 as an Assistant United States Attorney, and there is the saying that no matter what the verdict when justice is done the United States Attorney never loses. So I do commend him, but, on the other hand, I don't see anything greater about it, but that he did his job. I have considered this question, and if it were a close case I would be inclined to agree with you. But where seven out of eight participants on that occasion all testified and everyone's story dovetails with the other to the degree that it did, I can't see Williams' actions in another trial affecting this. I can't see that at all,

for if the stories were not true, it would have to be the biggest frame-up since Dryfus, and they didn't that many witnesses in the Dryfus case.

I don't agree with you. I think you should preserve his rights, and you have a right to do that, but I deny the motion based on that ground.

MR. PRAVDA: I will renew the motion which was left open at the close of the trial with regard to the one piece of 3500 material which was furnished to the defense in the second trial on Robert Ruddock, which it is our contention should have been furnished during the first trial, because it would have been Brady material.

THE COURT: I remember the motion and I did reserve on it. I deny it with an exception to the defendant. If he had been convicted on the first trial and this had been brought forward, it would make a great deal of sense at that point in time. Since he has been convicted on the second trial, at which time he did have the material and knew exactly what it was and used it, I don't see any basis for it at all.

What you are talking about are negatives, almost like saying that the United States Attorney did not tell his opponent that there are Chinamen in China. Well, he was never asked. In that particular instance he was

never asked specifically was Stewart one of them. He mentioned a number of people and did not mention Stewart. But he did not mention Shirley Hall, who was just as big a figure as he was, and if he didn't know that Shirley Hall was there, then that would be ludicrous. I deny it.

MR. PRAVDA: I don't know if your Honor wants to permit argument on this point.

THE COURT: What is the argument? It is a negative thing; it is not a positive thing saying that "I know that Stewart was not there."

MR. PRAVDA: I agree with your Honor on that. He just failed to mention him. But in correlating it to the failure to mention Shirley Hall, it is important to remember that Shirley Hall was not alleged to have been at the bank, and she was the person who was watching the get-away car.

THE COURT: He knew Shirley Hall was in it just as well as he knew Stewart was in it, but he didn't mention him at the time and was not pressed on it. I do not agree with you. It is denied with an exception.

MR. PRAVDA: This is to reserve the point on appeal adequately, to indicate that the request for the Brady information was specifically made to the Government and their response thereto I would like to have made a

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Court exhibit, or my own exhibit at this late date, the discovery letter which I received from Mr. Buchwald.

THE COURT: There is no dispute the thing happened the way you say it happened. Buchwald doesn't dispute that.

MR. PRAVDA: As I was reading the cases on this point just to see what firm ground I had, it appeared to me particularly in the Second Circuit that there had to be for real relief a specific showing that you asked for the material, and I just wanted to adequately preserve that point.

THE COURT: I think it appears in the record. However, if you want to put those two in to amplify the record, unless Buchwald objects to it, I will have them marked as exhibits in the case.

MR. PRAVDA: I will ask Mr. Buchwald and I thank your Honor.

THE COURT: There is also another situation where I had used this cancer analogy in another charge.

MR. PRAVDA: I read the case that you cited to me and I have not made any further motion on that point.

THE COURT: I want to indicate at this point in time that this was a complete slip on my part and I recognized it almost immediately when I left after I talked

to you, and when the jury came in at the next immediate time following it I told them that I had made an error in this regard and that I wanted them to disregard it, and I believe they did disregard it, because the verdict did not come in for hours afer that, and so as far as that is concerned I want to indicate on the record that I did not purposely violate the directions of the Court of Appeals in which it said that that analogy was not a good one. It was just a slip.

And in reference to your charges here, we are going to put the two of them together, because you have further charges in the second case, and you hav exceeded the limits in the first case.

MR. PRAVDA: I am aware of that.

THE COURT: So we will take care of both of them together. You are going to submit the other one pretty soon?

MR. PRAVDA: The only reason I did not combine them --

THE COURT: I didn't say you should combine them. I want to consider them at the same time.

In the first case there was a suggestion that there was an alibi by way or employment. That never developed in the second case.

MR. PRAVDA: That is corredct.

THE COURT: For what reason?

MR. PRAVDA: It was not an alibi for the precise time of the crime.

THE COURT: It covered up to 7 o'clock and this happened at 9 o'clock or 10 o'clock?

MR. PRAVDA: Your Honor had specifically taken judicial notice and charged the jury in the first trial that the travel could have been accomplished, even accepting all of the testimony.

THE COURT: I was just curious as to that.

Then, Mr. Stewart, we will proceed on with this. There is no legal reason then at this point why you cannot be sentenced that you are aware of, is there? You can consult with your lawyer.

DEFENDANT STEWART: No.

THE COURT: Do you know of any legal reason, other than as I have ruled here and given you exceptions? Talk with Mr. Pravda whether you have any legal reason?

MR. PRAVDA: The defendant has a question, your Honor.

THE COURT: That's why I am asking him these questions. I want him to ask anything he wants.

DEFENDANT STEWART: It was not exactly a ques-

tion. I was just listening to what you were saying.

THE COURT: I am having trouble hearing you. You are talking very low and I can't hear you.

DEFENDANT STEWART: No questions.

THE COURT: So that there is no question.

Is there anything you want to say on your own behalf or any evidence you desire to produce in mitigation of sentence?

DEFENDANT STEWART: Well, just the fact that Williams committed perjury at some other trial, you know. I am not aware of what he said, you know, but you should take that into consideration, feel.

THE COURT: I understand what you are saying. I don't know whether you are aware of this -- I think you are, because you are intelligent enough to understand -- your lawyer has protected you by excepting to what I have done so that another Court can pass on it. Your legal rights are protected at this point. Now, what will happen will be something some other Court will have to pass upon. Do you understand that? Now, is there anything you want to say on your own behalf?

What we mean by the word "mitigation" is this, why I should make the sentence as light as I can, make it less.

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Now, is there anything you want to tell me or any evidence you desire to produce in this vein? In that regard?

DEFENDANT STEWART: Yes. I have a family, big family, you know, mother, father, wife. At the time I was working, you know, my wages wasn't that much. But I feel like I was the only one working -- a lot of reasons. I feel like free out there, I mean. Confining me? It doesn't really make any sense. A lot of reasons.

THE COURT: Apparently when you spoke to the probation officer, as I recall, you didn't want to discuss it in any way.

One of the things that sometimes is considered by the Court is the question of remorse. Now, I am not suggesting to you that you have to tell me that you are guilty of this, and as they used to do in Latin, beat themselves on the chest and say "mea culpa, mea culpa, mea maxima culpa," which means, "my fault, my fault, my greatest fault." But since you want to say something, I would suggest to you are you saying that you are sorry for what you did? I don't understand what your point is, that you are worrying about your folks and you said something about the obligations that you had, but I don't know whether that means that you just did nothing, or that you were a

burdened man and did something?

Can you clear it up for me? Or do you want to stand on your statement as it is?

DEFENDANT STEWART: Like, right now, you know, I am in a frame of mind of being sentenced. I mean to elaborate with that.

THE COURT: You went in here to a place where there were a lot of innocent people standing around. I am bound by the jury verdict. I was not there. I don't know what happened. I do know what was testified to. And as I say, I am bound by the jury verdict. And the testimony is that there were a group of you in there with guns, with a shotgun, with a grenade that didn't have anything in it, and there were innocent people. A milkman comes in and tries to deposit his money, and here you are with loaded guns and what-not.

You, particularly, were convicted under the section which concerned armed robbery. The other defendants in this case pleaded to conspiracy. You, on the other hand, have been found guilty of this other charge, which is a very serious charge, involving crimes where people sometimes get killed. So that if you have finished your remarks and you still feel the way you do when you talked to the probation officer, I can't force you

to tell me anything, and I don't desire to force you to tell me anything. But at this time I see no remorse of any kind whatsoever.

All you are saying to me is you got relatives and so forth and that is it. I don't know exactly what that is supposed to mean. It could mean either one of two things; it can mean you have them, and, therefore that should be considered, because they will be deprived of your company while you are in jail. On the other hand, it can mean that because of this burden that you had you did, in fact, commit this crime, that you were there and that you are sorry for it. I don't know what you are telling me.

DEFENDANT STEWART: This is non-related to the case. At the time it was '72. I was working. I was asked by the Transit Police Department to come down for an interview. They said I was under investigation. I went down there. I was locked up. I spent exactly 14 months for something I didn't know nothing about. I went down there on my own. During that time, that is the time I met David Williams, you know, and ever since then like when I got out before him I pleaded guilty to the one year time served. When I got out after that, you know, I heard he was out. I invited him over to my house for

a couple of parties I gave. I went to a couple of parties he gave. The next thing I know I am in a bank robbery.

THE COURT: Well, does that mean you did it or you didn't do it?

DEFENDANT STEWART: It doesn't mean I didn't. I don't know exactly what happened. They showed me some pictures saying this is me, you know.

THE COURT: You know, I still don't follow you because I don't know whether you're telling me something happened and you did something and you were not aware of what you were doing and you didn't have possession of your senses, or whether you're telling me you were not there at all, and you were framed.

DEFENDANT STEWART: I couldn't say exactly what it is, your Honor, because I don't know, but I am saying --

THE COURT: Mr. Stewart, I have no desire for you to say to me, as I said before, that you got to beat your chest and say "mea culpa, mea culpa, mea maxima culpa," that Latin expression I was telling you about. If you want to tell me something, tell me: if you don't want to tell me, don't tell me. I'm not going to force you to do it. You have a right not to and you exercised your right in the Probation Department. But as you stand

before me I see no single feeling of remorse, and as far as I am concerned, you have a right not to tell me anything. But if you're going to tell me something, tell me. If you're not going to tell me, then stand on your rights and say, "That is what I am standing on," and that is it. I'm not going to force you to tell me anything.

Have you finished Your remarks?

DEFENDANT STEWART: Yes.

THE COURT: The probation report was given to ccunsel. I presume you read it, Mr. Pravda?

MR. PRAVDA: I did.

THE COURT: Did you discuss it with Mr. Stewart and tell him what was in there?

MR. PRAVDA: I didn't actually discuss it with him.

THE COURT: What is the sense of giving you these things? How does he know what is in the report if he has not been told about it?

MR. PRAVDA: I discussed it with Mr. Stewart, his past, and the probation report confirms what I already understood to be the case.

THE COURT: Then, in effect, you told him the substance of it?

MR. PRAVDA: He has told me the substance of it.

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THE COURT: After reading the report you are convinced what he told you in substance is in the report?

MR. PRAVDA: Yes. There are only three points that I would like to make to your Honor in connection with the sentencing and the probation report, and two of them have been touched on briefly.

I wanted to explain to your Honor, which I didn't think was adequately explained in the probation report, that there is a prior involvement with the law on a number of occasions. That is disclosed In this probation report, and I wanted to point out to your Honor that for the most part they were drug related offenses, and I think it is evident and I think it is stated in the report that the defendant is not now a drug user, and that type of involvement, of course, will not be repeated.

The other thing that I wanted to point out to your Honor is there was a guilty plea in the past to a token booth subway holdup, and I wanted to make clear to the Court, which Mr. Stewart has just mentioned, that in that case he was detained in pretrial detention for 14 months and he then was told, as Mr. Stewart has explained to me, that he would be a year away from a trial, and it was at that point that he chose to plead guilty to the offer of receiving a sentence for time served, and hat he acknowl-

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edges. But he has steadfastly maintained to me that he did not, in fact, commit that crime, but faced with a further year in jail until he could even receive a trial, he chose to plead guilty.

The last point I wanted to make is what Your Honor has touched on, and I notice it is important in a judge's thinking in terms of sentencing, and that is the question of remorse. I realize that Mr. Stewart did not make a statement to the probation officer.

4 THE COURT: Well, he is being faced with a Hobson's choice. He wants to pursue his appeal, and still in all he wants to be able to say to me he is remorseful, but he can't come around to do that, for in order to do that he has to say he is guilty. I can understand the reluctance on his part not to say that. That is why I have not forced his Hobson's choice on him.

MR. PRAVDA: The point I wanted to make, which is somewhat different, when Mr. Stewart saw the probation officer, particularly the first time -- and I spoke myself to tne probation officer -- and this was just after the return of the verdict of guilty after the second trial -- I would just like to point out from my own experience with Mr. Stewart, and I have spent hours during the two trials with him and two nights, until 10.30 at night -- I spent a

lot of hours with Mr. Stewart -- for his own reasons, and it probably comes out of his background, there is his difficulty with dealing with the system, the so-called members of the establishment. There was a chasm existing between us throughout the first trial, and it was not until well into the second trial when he was starting to feel I was working in his best behalf that things started to loosen up. There was great difficulty bridging that chasm with the probation officer. And to the extent that your Honor indicates there was no showing of remorse, I simply want to point out my own experience, that it is hard for a person to open up in a very brief time and under the difficult circumstances that he was then faced with, and I hope your Honor will consider that in determining what kind of feelings Mr. Stewart might be having at this time with regard to his role in this whole event.

THE COURT: Have you concluded your remarks?

MR. PRAVDA: I have.

THE COURT: There are many things in this record and in the probation report, which is dated -- actually, it is undated and contains eight pages, probably extracted from other papers here on November 1st and put into this proceeding by reference.

I will hear you, Mr. United States Attorney.

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MR. HOSKINS: I have spoken with Mr. Buchwald about this case previously. The Government has nothing to add to the pre-sentence report.

THE COURT: Well, I tried this case; I am fully familiar with the facts. There are a couple of things I want to indicate before I sentence him.

No. 1, it is my policy, and I have observed it for many, many years coming over from the State Court, never to add punishment to a defendant who goes to trial. As far as I am concerned, he is entitled to a trial, and the fact that he stands trial should not be used against him as far as punishment is concerned.

In this case there were two trials, but it still remains the same. I place him in the same position as I place a man who does not go to trial as far as sentence is concerned.

There is a difference between him and the other people in the case. He was one of eight people who committed this robbery. Six of them went into the bank. One was a person who was waiting with the getaway car some distance away, and the second person who was not in the bank was in a van who would transport the actual bank robbers from the scene of the bank to where the cars were.

Six went into the bank. Three of them were definitely armed, fully armed with weapons. One of them had a shotgun which apparently was unloaded. The fifth person had a handgrenade which apparently had not charge in it.

But I would not have liked to have been in that bank when he jumped in the middle of the bank and held the handgrenade over his head and said, "Don't move! I have a handgrenade here! Nobody better come in here, including cops!" I can understand their feeling at that time.

Now, those other defendants who were in the bank and who all pleaded guilty to the conspiracy count --

MR. PRAVDA: I think three pleaded guilty to the bank robbery count.

THE COURT: They did plead guilty to what I call the less serious charge of bank robbery unarmed. In addition to that they testified not once, but twice, and probably some of them testified in the grand jury. So that they don't stand in the same position as he does.

In this particular case this defendant was found guilty by the jury on Counts 1, 2 and 3 of Indictment 74 Criminal 498.

It is adjudged by the Court that the defendant Aaron L. Stewart on Indictment No. 74 Criminal 498 on

Count 1 thereof is sentenced to a term of imprisonment of five years and he is turned over to the Attorney General or his duly authorized representative to serve that term. In addition thereto he is fined the sum of $10,000.

On Count 2 the defendant is sentenced to a term of ten years and in addition thereto a fine of $5000, the term on Count 2 to run concurrently with the term imposed on Count 1.

On Count 3 the defendant is sentenced to a term of imprisonment of ten years and $10,000 fine, and that term of imprisonment on Count 3 is to run concurrently with the terms imposed on Counts 1 and 2.

He is remanded for the purpose of serving his sentence.

MR. PRAVDA: May I request that your Honor impose this sentence under Section 4208(a) of Title 18, which would permit the defendant to be eligible for parole in the discretion of the Parole Board at that time?

THE COURT: It is not the correct section, but the description of it is right. I have considered that and I decline to do so.

Now, Mr. Stewart, you were convicted after trial, and, therefore, you have the right to appeal. The right to appeal must be exercised within ten days from today, and

if you want to appeal and if you have no funds, you may proceed in forma pauperis.

If you desire the Court to have an appeal filed by the Clerk of the Court at this time, I will direct him to do so. On the other hand, if Mr. Pravda is going to take care of it for you, he can do it.

What is your wish in the matter?

MR. PRAVDA: We are going to appeal. I would request the Clerk to file notice of appeal.

THE COURT: The Clerk is directed to file a notice of appeal on behalf of the defendant. He will have to sign an affidavit so that he can proceed in forma pauperis.

You have been assigned under the Criminal Justice Act?

MR. PRAVDA: Yes.

THE COURT: I see no reason why you should not be treated in that fashion.

Are you going to continue in the appeal?

MR. PRAVDA: I believe so.

THE COURT: We have to report to the Court of Appeals that you prepared to continue on.

MR. PRAVDA: Yes.
